1946

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

to whom was referred the Bill A-5, intituled:
"An Act respecting Bankruptcy."

No. 4

WEDNESDAY, JUNE 26, 1946

CHAIRMAN

The Honourable Elie Beauregard, K.C.

WITNESSES:

Mr. J. M. Bullen, K.C., representing The Canadian Credit Men's Trust Association.

Mr. W. J. Reilley, K.C., Superintendent of Bankruptcy.

Mr. R. O. Daly, K.C., representing The Investment Dealers Association of Canada.

Mr. A. C. Crysler, Legal Secretary, Board of Trade of the City of Toronto.

OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

ORDER OF REFERENCE

EXTRACT from the Minutes of Proceedings of the Senate for 13th May, 1946.

Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (A-5), intituled: "An Act respecting Bankruptcy", be now read a second time.

After debate, and—
The question being put on the said motion.
It was resolved in the affirmative.

Ordered, That the said Bill be referred to the Standing Committee on Banking and Commerce.

L. C. MOYER,
Clerk of the Senate.

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable ELIE BEAUREGARD, K.C., *Chairman*

The Honourable Senators

Aseltine	Euler	Marcotte
Aylesworth, Sir Allen	Fallis	McGuire
Ballantyne	Farris	Michener
Beaubien (*Montarville*)	Foster	Molloy
Beauregard	Gershaw	Moraud
Buchanan	Gouin	Murdock
Burchill	Haig	Nicol
Campbell	Hardy	Paterson
Copp	Hayden	Quinn
Crerar	Howard	Raymond
Daigle	Hugessen	Riley
David	Jones	Robertson
Dessureault	Kinley	Sinclair
Donnelly	Lambert	White
Duff	Leger	Wilson—(47).
DuTremblay	Macdonald (*Cardigan*)	

MINUTES OF PROCEEDINGS

WEDNESDAY, June 26, 1946.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senator Beauregard, Chairman, The Honourable Senators Aseltine, Buchanan, Campbell, Crerar, David, Dessureault, Duff, Euler, Gershaw, Gouin, Hayden, Hugessen, Jones, Lambert, Leger, Macdonald (*Cardigan*), McGuire, Molloy, Moraud, Paterson, Sinclair, White—23.

In attendance: The official reporters of the Senate.

Mr. J. F. MacNeill, Law Clerk & Parliamentary Counsel.

Mr. W. J. Reilly, K.C., Superintendent of Bankruptcy.

Bill A-5, "An Act respecting Bankruptcy" was again considered.

Mr. J. M. Bullen, K.C., representing the Canadian Credit Men's Trust Association, Ltd., was heard.

Mr. W. J. Reilly, K.C., Superintendent of Bankruptcy, was heard in explanation of certain clauses of the Bill.

Mr. R. O. Daly, K.C., representing The Investment Dealers' Association of Canada, was heard.

At 1.00 p.m. the Committee adjourned until 8 p.m. this day.

At 8 p.m. the Committee resumed.

Mr. A. C. Crysler, Legal Secretary, The Board of Trade of the City of Toronto, was heard and submitted a brief on behalf of the Board.

Further consideration of the Bill was postponed.

At 9.40 p.m. the Committee adjourned until to-morrow, 27th June, instant.
Attest.

A. H. HINDS,
Chief Clerk of Committees.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, WEDNESDAY, June 26, 1946.

The Standing Committee on Banking and Commerce to whom was referred Bill A5, an Act respecting Bankruptcy, met this day at 10.30 a.m.

The CHAIRMAN: Gentlemen, we will now proceed with our business. I will call on Mr. Bullen who, I understand, is appearing for the Canadian Credit Men's Trust Association Limited.

Mr. J. M. BULLEN, K.C.: Mr. Chairman and gentlemen, I appear on behalf of the Canadian Credit Men's Trust Association Limited. This is a Canadian-wide organization for the promotion of a high standard of ethics between wholesalers, manufacturers and retailers. It has some 1,500 members, all prominent wholesale and manufacturing houses situated across the Dominion, and has a credit clearing house bureau through which members get information as to the financial standing and trade activities of the retailers with whom they deal. The organization has its head office in Toronto, with branches in New Brunswick, Quebec, Manitoba, British Columbia, one other in Ontario, two in Alberta and two in Saskatchewan.

The association has acted as a trustee in Bankruptcy ever since the inception of the Bankruptcy Act and has handled a great many estates and has had a great deal of experience with the Act in practically all its forms. Before that, it acted as assignee under the old Assignments and Preferences Act.

Whilst the association acts as trustee, the submissions contained in this memorandum are advanced on behalf of the membership, representing the various wholesale and manufacturing houses, who are the creditors of the bankrupt estates. Trusteeship is performed more as a service to these creditors and the association is more interested in the Bankruptcy Act from the creditor's standpoint rather than that of a trustee. It is on their behalf that I should like to address myself to your committee this morning.

The association approves of the provisions making it possible for a debtor to enter into a composition, extension, or scheme of arrangement before as well as after bankruptcy. There is always a stigma attached to bankruptcy as when one mentions bankruptcy to a trader it is like mentioning the preparation of a will to some people—they feel it is the beginning of the end. Aside from this there should be some provisions for proposals, extensions or schemes of arrangement being made without the necessity of dealing through a licensed trustee or invoking any provisions of any Act.

Hon. Mr. MORAUD: Do you approve of the principle of those schemes?

Mr. BULLEN: Yes, sir, we do approve of that principle. We say that it should not be necessary for a man to go to a licensed trustee on all occasions. There are many proposals and schemes of arrangement that can go through with the consent and co-operation of the creditors all joining in without the necessity of a trustee interfering at all, or at least without invoking the provisions of the Bankruptcy Act.

These schemes of arrangement and composition are dealt with in part 2 of the bill, sections 11 to 24. We suggest that some provision should be inserted in the bill to validate informal arrangements and compositions or provide that they do not require the services of a licensed trustee at all. I shall have some-

thing to say at a later stage about a section in the bill which seems to me to eliminate proposals under the Companies Creditors' Arrangement Act, bulk sales, and that sort of thing.

Hon. Mr. HAYDEN: Your approval of that principle does not necessarily mean that you approve of bringing proceedings under the Bankruptcy Act that now might come under the Companies Creditors' Arrangement Act?

Mr. BULLEN: As a matter of fact, Senator Hayden, I want to speak about that later on. We are against that principle of eliminating the present procedure under the Companies Creditors' Arrangement Act.

Hon. Mr. MORAUD: It is merged in this bill.

Mr. BULLEN: Just a word as to some of these sections and subsections.

Subsection 3 of section 11 reads:

> No such proposal or any security or guarantee tendered therewith may be withdrawn pending the decision of the creditors and the court with respect thereto, nor shall any variation in the proposal by the court release the sureties thereunder, but the sureties shall have two days' notice of any amended proposal as approved by the creditors and the debtor, after which time, if no objection is taken, they shall be considered as having agreed to the amended proposal.

We think that interferes with the rights of sureties and is an encroachment on the law of suretyship that might lead to dangerous situations. As you know, the surety agrees—generally under some pressure—with the debtor to guarantee certain payments, say, ten, fifteen or twenty cents on the dollar, under certain conditions. We think if the court is going to alter any of these conditions the onus should strictly be put on the debtor or the creditors to get the surety's approval in writing, and there should be no procedure set up under which the surety might fail to get notice and be bound by changes he knows nothing about.

Hon. Mr. HAYDEN: Can you see any reason for departing from the general rule, that if I guarantee performance by some party it should be on my own terms?

Mr. BULLEN: No. Every law student from the time he enters on the study of the law is taught that principle.

Hon. Mr. HAYDEN: Is there anything on the ground of expediency that would justify it?

Mr. BULLEN: I would not think so. One takes a lot of time going to the courts to get approval, and there is no reason why the surety should not be notified. It seems to me it places too much of an element of chance in the fact that the surety might be away from his usual place of business or residence after he has guaranteed the indebtedness of the debtor for the purpose of the proposal. Then if some change is made and he does not object within two days, he is stuck with the change.

Subsection 2 of section 12 reads:—

> In the case of a corporation the trustee shall send to each shareholder, bondholder and debenture holder affected by the proposal the documents referred to—and they are set out. We suggest that no trustee should be put to the very laborious procedure of sending the proposal or scheme of arrangement or composition to each shareholder, bondholder or debenture holder. After all, the shareholders appoint the directors, and no proposal or scheme can be made unless it is initiated by the directors, and there is no necessity of notifying the shareholders of some arrangement between the company and its creditors.

Hon. Mr. MORAUD: I suppose there could be publication in the newspapers about some things, otherwise the shareholders, bondholders or debenture holders, would not be notified at all.

Mr. BULLEN: But the theory of all company law is that the directors represent the shareholders. Here they are making some arrangements with their creditors, and the directors are acting for the shareholders. So why should notice be sent to all of them?

Hon. Mr. MORAUD: But have not the directors the right to make an arrangement with creditors without consulting the shareholders? Supposing they do that, surely the shareholders should be notified in some way either by newspaper advertisement or by letter?

Mr. BULLEN: But I would not think that a scheme of arrangement or proposal with the company's creditors would be made without consultation with the shareholders.

Hon. Mr. LEGER: In other words, you want to authorize the directors to take whatever action they see fit?

Mr. BULLEN: That is what we suggest. That is what they are there for, to carry on business, and if they want to make an arrangement with the creditors the trustee should not be put to the burden of notifying all the shareholders.

Hon. Mr. LEGER: In the first place, he would not have the names of all the shareholders.

Hon. Mr. HAYDEN: Of course, what you are talking about now is something entirely out of the ordinary course of business of the company.

Mr. BULLEN: The shareholders would know about it, anyway.

Hon. Mr. HAYDEN: If the plan were approved it might have the effect of robbing the shareholders of any further interest in the assets of the company. That is a pretty important step.

Hon. Mr. CAMPBELL: You feel that the responsibility of notifying all the shareholders should not be on the trustee.

Mr. BULLEN: That is it.

Hon. Mr. CAMPBELL: Is it the responsibility or the burden of the work?

Mr. BULLEN: Both. Our view is that the directors would make the best proposition. They are the agents, so to speak, the representatives of the shareholders, and cannot make it without the knowledge of the shareholders. Why do they have to be notified after it is made?

Hon. Mr. CAMPBELL: Would it cover your point to say that the notice would not be effective unless it was approved by resolution of the shareholders?

Mr. BULLEN: Yes, that might do. I would not think the directors would make a proposition unless they had the resolution of the shareholders.

Hon. Mr. CAMPBELL: Your point is that rather than have the trustee required to send notices of the proposal to all shareholders and bondholders, a meeting should be called and a resolution passed approving of the proposal before it is finally adopted?

Hon. Mr. HAYDEN: If the plan is approved by the shareholders before it is submitted by the directors it should not be necessary to send a notice out. I have some difficulty in accepting the view that the directors would submit a plan or proposal without some reservations, unless it had been approved by the shareholders.

Mr. BULLEN: This would not be so important if the Companies Creditors' Arrangement Act were not enveloped in the Bankruptcy Act.

Hon. Mr. HUGESSEN: The subsection requires the trustee to send various documents to every shareholder, bondholder and debenture holder. I should think that is an obligation which the trustee would be entirely unable to fulfil in certain circumstances.

Mr. Bullen: The next thing that I want to deal with is subsection (1) of section 13:—

> If the creditors by a ten per cent vote of those voting in person or by proxy at the meeting at which a proposal is being considered so require the meeting shall be adjourned to such time and place as may be fixed by the chairman. . . .

I would suggest that a ten per cent vote of those present is too small. Ten per cent of those present at a meeting might hold a small amount of the indebtedness of the debtor. It was thought that perhaps the committee might give some consideration to having this provide for—

Hon. Mr. Hayden: A majority vote.

Mr. Bullen: Well, at any rate a higher percentage than ten—probably twenty per cent of those present, provided they hold thirty per cent of the claims, or something of that kind.

Hon. Mr. Hayden: Why should less than a majority of those present have that power?

Mr. Bullen: If you would go that far, it would be all the better.

Hon. Mr. Hayden: And there could be a provision that a certain dollar value be represented.

Mr. Bullen: A ten per cent vote is too small. Some persons might have an ulterior motive and they could easily get ten per cent of the shareholders present to adjourn the meeting and create obstacles that the majority would not think of creating.

Then, the word "shall" might be changed to "may". The subsection says "the meeting shall be adjourned". This might be changed to "the meeting may be adjourned".

Hon. Mr. Hayden: How could you say that? That would ignore the vote.

Mr. Bullen: I have the word "shall" underlined in my copy of the bill, but it is not referred to in my brief. Perhaps I considered it was not worthwhile putting in the brief.

Then we submit that section 23 is much too radical, particularly subsection 10. Business to-day does not warrant more interference by administrative officials. In our view there is enough at the moment.

Hon. Mr. McGuire: Too much.

Mr. Bullen: I quite agree with you, Senator, there is too much. We think it is a rather vicious principle to saddle these business arrangements with the sanction or approval of or interference by any administrative official, no matter who he may be. The court has the respect, generally speaking, of the majority of citizens and traders. It is the place of last resort where one's rights are adjudicated upon. When a matter is referred to the court the creditor feels, "Well, I have got the best I can get".

Hon. Mr. Hayden: Are you referring to the power proposed to be given to the court to formulate a proposal, notwithstanding the attitude of the shareholders or creditors?

Mr. Bullen: That is subsection 10 of section 23, and it is so radical that it is hard for us to conceive why such legislation as that should be put on the statute books. After all, with the utmost respect to our judiciary, we know the judges are not business men; they have not had a training in business.

Hon. Mr. Hayden: Not necessarily.

Mr. Bullen: I grant you that some of them have, but, as you know, judges as a rule are not business men. We submit that the court should not be burdened with the task of formulating a proposal, nor should it be given power to put it through irrespective of the wishes of the shareholders or creditors. If such legis-

lation as that has to be put through and we must have some tribunal able to make a compromise or proposal or scheme that the creditors must accept, one would suggest that probably the same procedure should be followed as in railway and telegraph matters. There is a Transport Board to deal with railway matters, and a Municipal Board to deal with municipal money by-laws. Bankruptcy is a kind of specialized piece of legislation, and if it is necessary to interfere with business to the extent that subsection 10 of section 23 does, we feel that probably a board of business experts should be set up. We are not advocating any such arrangement as that at all, because we realize how fatal and detrimental it would be to business men in the sale of their securities. You gentlemen would not buy securities if you knew the judge of a court could make some arrangement depriving you of some of your rights or adding some obligations without your having anything to say about it. That section we think could quite easily be deleted.

Coming to subsection (4) of section 18, you will note this provides:—

> The court may not make any material alterations in the substance of the proposal. . .

We submit that is much too wide and leaves room for appeals and arguments as to what is or what is not "material alteration in the substance of the proposal". This subsection might quite well be deleted, so long as the court has power to vary the proposal in the best interests of the creditors. I think some such language as that is used in the present act, and the committee might well consider whether it would not be advisable to leave the section as it is.

Hon. Mr. HUGESSEN: Would your suggestion be met by deleting part of the first and second lines of subsection (4), so that it would read: "The court may correct, or supply, any accidental or formal error or omission in the proposal," and so on.

Mr. BULLEN: Yes, Senator. I think the court can be trusted to make a change, so long as there is a qualification that it is to be in the best interests of the creditors.

Hon. Mr. HAYDEN: If the words referred to by Senator Hugessen were deleted, that would accomplish your object, would it not?

Mr. BULLEN: Yes, Senator.

I do not know what the draftsman meant by subsection (4) of section 19:—

> In proceedings by a person not bankrupt making a proposal for a composition the rights of all persons affected thereby shall be resolved as of the date of the filing of the proposal.

Mr. BULLEN: The draftsman says:—

> This is a new subsection. The effective date of all proceedings is otherwise fixed in the Act. This is deemed necessary with respect to these particular proceedings.

If this subsection is intended to mean that all actions or proceedings against a debtor are to be stayed while he is in the throes of having some arrangement with his creditors approved, it is not well expressed and should be clarified. As you know, there is a section in the Companies Creditors Arrangement Act to that effect. The draftsman seems to indicate that this subsection is inserted because rights are crystallized in other instances by other sections of the bill. If that is the only object, we think the rights of the creditors should not be interfered with in that way. It is more or less blind legislation: one does not know what it might lead to.

Hon. Mr. HAYDEN: Why should you crystallize the rights of creditors at the time when there have been no bankruptcy proceedings as we ordinarily understand them? But this is looking to proceedings outside of bankruptcy.

Mr. BULLEN: I do not think it is necessary, and again I say it is not advisable that the creditors' rights should be interfered with. Their rights should be protected right up to the time they get their money back.

Hon. Mr. LEGER: Is not the subsection inserted to prevent somebody getting a preference?

Hon. Mr. HAYDEN: The law is clear on that now.

Hon. Mr. McGUIRE: Mr. Reilley is present. I suggest we ask him for an explanation of that subsection.

Mr. REILLEY: Its purpose is very simple indeed. In connection with the proof of claims of creditors and other matters in the ordinary bankruptcy proceedings, the creditors' rights are established as of the date of the filing of the petition or the assignment. If the proposal is made before bankruptcy, what time are you going to fix to have the right of creditors established? That is all it means.

Hon. Mr. CAMPBELL: What happens to the creditors between the filing of the proposal and the settlement of the proposal?

Mr. REILLEY: Their status is established as from the date of the filing of the proposal. Any creditors coming in after that would have their rights resolved in the same way as in bankruptcy.

Hon. Mr. CAMPBELL: In other words, creditors existing at the filing of the proposal might accept 50 cents on the dollar, and the creditors who came in after that might receive 100 cents.

Mr. REILLEY: Yes.

Hon. Mr. HAYDEN: If the creditor at the time of the filing assigned his claim, you are freezing his rights as of the date of the filing; you are not freezing the creditor's dealing with his rights?

Mr. REILLEY: No. It is a fixed date when the rights of the creditors in the case of a composition shall be determined.

Hon. Mr. HAYDEN: Why do you think that is necessary where there is no bankruptcy?

Mr. REILLEY: Because the same problems and differences may arise in the setting up of the claims as though bankruptcy had occurred, and you have to have some time when those rights are settled. There may be two preferential creditors who set up rights under a proposal, and they have to fight it out as to who has the preference and gets payment first.

Hon. Mr. HAYDEN: It seems to me, subject to further thought, we should let the creditors fix the cut-off date.

Mr. REILLEY: I do not see any radical change in this.

Hon. Mr. HAYDEN: Except that you are dealing with ordinary rights under the law, not under what we generally understand as bankruptcy. The debtor is not in bankruptcy and may never get into bankruptcy. I do not like freezing the rights of anybody unless an insolvency has occurred by a petition leading to bankruptcy.

The CHAIRMAN: Thank you, Mr. Reilley.

Mr. BULLEN: If that is the purpose of the draftsman, then we suggest there should be some section here as there is in the Companies Creditors Arrangement Act stopping the continuation of a proceeding that is already started by some creditor against the debtor or stopping him issuing a writ and commencing proceedings. I do not see any provision in the bill for that purpose. That is rather important, because one creditor might upset the apple-cart by starting something afterwards and causing a great deal of trouble.

Subsection 5 of section 19 reads:—

> Any person making a proposal shall act in complete good faith and failure on his part to make a full disclosure of his property and other material facts relating to the causes of his financial difficulties or his ability to pay or to make a fair and adequate valuation of his property shall vitiate the proposal unless the court is satisfied that there was no intent on the part of such person to mislead or deceive his creditors.
>
> We suggest that is weak legislation. It might be more effective if you inserted a penalty clause of some kind.

I see the draftsman has added section 203:—

> (1) If any creditor, or any person claiming to be a creditor, in any proceedings under this Act, wilfully and with intent to defraud, makes any false claim,—etc.

Then he is subject to some penalty. We think the aim of the draftsman could be still better accomplished by amending this section to include any debtor. There should be some teeth in the section in the way of a penalty.

Under section 4, subsection 3, a shareholder of a corporation may file a petition against the corporation. That in effect is incorporating provisions of the Winding Up Act and of the various provincial companies acts into the Bankruptcy Act. We think those acts should stay as they are, and that the winding up should not be brought into the Bankruptcy Act at all. A shareholder might cause a great deal of harm to a solvent organization. We have some individuals around Toronto who purchase one share, get into a meeting of shareholders, and cause quite a bit of trouble.

Hon. Mr. McGuire: Are there more than one of such persons in Toronto?

Mr. Bullen: I have one that comes into my mind. He causes a great deal of trouble. A shareholder under the Bankruptcy Act might suggest some company is insolvent, and the advertising might be very harmful.

Hon. Mr. Hayden: You are giving rights to persons who in the bankruptcy would be the lowest in the scale of ranking creditors.

Mr. Bullen: Yes. Subsection 3 of section 4 is the only subsection that deals with the question of insolvency. If it is meant to bring the winding up of a corporation under the Bankruptcy Act—and it looks as though the draftsman had this in mind, as many of the conditions set out in the subsection are based on grounds other than insolvency—a great many provisions of the Winding Up Act would have to be made applicable or incorporated in the bill. We think the principle of bringing into the Bankruptcy Act the winding up provisions of the Winding Up Act is wrong, and that the right of filing a petition should not be given to a shareholder.

Hon. Mr. Hugessen: I am disposed to agree that paragraph (*f*) of section 3 would empower the shareholder of any corporation to present a petition for winding up in bankruptcy against the company if "for any other reason it is just and equitable that the property of the company be realized upon and administered for the benefit of the creditors and the shareholders." He could support that by his own affidavit.

Mr. Bullen: Yes. He might be disgruntled because he has not received any dividends and thinks the manager has a good job.

Hon. Mr. Hayden: He may want his money back.

Hon. Mr. Hugessen: Yes.

Mr. Bullen: As you gentlemen know, that is one of the most contentious sections of the Dominion Winding Up Act as to what is admissible. The courts have wrestled with that for some time. It seems to me that the stigma attached

to the word "bankruptcy" against a corporation might cause tremendous harm to it.

Hon. Mr. HUGESSEN: It is pretty dangerous.

Hon. Mr. HAYDEN: It might occur while the directors of the company followed a policy to improve the whole value of the assets before giving any benefits to the shareholders, and the shareholders might not like that. I do not know what "just and equitable" means.

Mr. BULLEN: No, there is no hard and fast definition of that yet.

Hon. Mr. HAYDEN: You just take a run at it.

Mr. BULLEN: This bill eliminates the custodian. The association approves of that step. In practically all its bankruptcy experience it finds that the custodian is merely a "fifth wheel." There are very few instances where the custodian is not continued as the trustee, and there seems to be no valid reason why there should be an accounting for the usually short period that the custodian is in possession for the purpose of preserving the assets and breaking off when he is appointed trustee.

Hon. Mr. HAYDEN: Since the trustee is the representative of all the creditors, maybe he should ascertain their views before acting.

Mr. BULLEN: I was just going to say that one helpful suggestion might be made here. Under subsection (5) of section 9 the Official Receiver, on accepting an assignment, appoints a trustee, "whom he shall, as far as possible, select by reference to the wishes of the most interested creditors or shareholders". Now, we all know there is favouritism. It is only human nature to favour certain individuals; we all have our friends and our associations. This wording, we think, leaves room for the Official Receiver to appoint one man as a trustee, or one association—it might be us for example, though we would not kick so much in that case.

Hon. Mr. HAYDEN: That would be well-deserved recognition.

Mr. BULLEN: Yes. In our opinion the word "shareholders" should be deleted and "most interested creditors" should be made clearer and definite. Too much room is left for favouritism by some particular registrar. Perhaps the words "substantial trade creditors" would help if substituted for "interested creditors".

Subsection (2) of section 32, which deals with the registration of the receiving order, seems to me to conflict with subsection (5) of section 27. That subsection (5) is a revamping of a section that is in the present act. The subsection says:—

> On a receiving order being made or an assignment being accepted by an Official Receiver, a bankrupt shall cease to have any capacity to dispose of or otherwise deal with his property which shall, subject to the provisions of this Act, and subject to the rights of secured creditors forthwith pass to and vest in the trustee named in the receiving order or assignment...

But section 32, subsection (2), states that the trustee is not the registered owner of the interest of the bankrupt until the receiving order or assignment is registered. It seems to me that the conflict between the two subsections might lead to some difficulty.

Hon. Mr. HAYDEN: Of course, you have to look to the interest of the general public. A person may purchase a bankrupt property without any notice.

Mr. BULLEN: When he purchases a property he searches in the sheriff's office, and he could search in the bankruptcy office just as well. If he finds an authorized assignment there he takes the property at his peril.

Hon. Mr. HAYDEN: Why not leave it that way?

Mr. BULLEN: We think this change interferes with that.

Hon. Mr. HAYDEN: It might. It seems to leave a gap, doesn't it?

Mr. BULLEN: Yes, that is the point. There might be some machinations that would cut out the effect of section 6 of the present act, which says that the property becomes the property of the trustee upon the making of the authorized assignment or receiving order.

Hon. Mr. HUGESSEN: Whereas section 32, subsection (2), makes the registration of the receiving order essential for that purpose.

Mr. BULLEN: That is correct.

Now I come to section 38, licensing of trustee. Perhaps I could leave that until I deal with the discharge of trustees.

Section 39 (4) (*g*), which provides that the Superintendent shall audit and examine trustees' accounts, would have to be deleted if what is suggested hereafter as to the granting of trustees' discharges is adopted. We think the courts should examine and audit the trustees' accounts, our view being that the creditors have absolute faith in the courts. It is true that at the moment we have a most excellent and benign Superintendent, but we may not always have him. In surrogate matters and winding-up matters and so on the accounts are passed before the court. We know of no agitation by any body of creditors, debtors or trade associations to have the present practice changed.

Hon. Mr. HAYDEN: The lawyers too take their bills to the court.

Mr. BULLEN: Yes. As I say, without disparaging anybody's standing, reputation or ability, the general public have absolute confidence in the courts, because of their continuity and suitability. For my part, I think it would be poor legislation to take the power to pass accounts away from the courts and vest it in a government official.

Hon. Mr. CAMPBELL: I suppose from a practical standpoint as well it is better to have the auditing done by the courts rather than by one centralized official.

Mr. BULLEN: We think it is much more practical as it is at present. We cannot conceive how, when bankruptcies become numerous, an official in Ottawa could possibly audit all the accounts coming in from the whole country. The debtor, the trustee, the creditor, or anyone else concerned with bankruptcy proceedings has always had the court in his locality available to him. One can have accounts audited and passed much better across a table, as it were, than by correspondence. An official at Ottawa might have some complaint about the manner in which a trustee was administering an estate. It would take some time to explain the matter to the official at Ottawa, whereas it would be thrashed out before a court on the day set for the hearing.

Subsections (7), (8), (9), (10), (11) and (12) of section 39 lead to too much administrative interference with the winding up of individual bankrupt estates. If this section must go through, the word "Court" should be inserted in lieu of "Superintendent" in a great many instances which will be patent to those considering the bill.

In section 41 (3) the word "Court" should be inserted for the word "Superintendent" in the third line. This subsection says:—

> The new trustee, shall, as soon as funds are available, pay to the former trustee, his proper remuneration and disbursements, as approved by the Superintendant . . .

We suggest that the approval be left with the court.

Hon. Mr. HAYDEN: You will notice that the same subsection goes on to say:

> and in the event of sufficient funds not being realized to pay the remuneration and disbursements of all the trustees the court shall determine the remuneration and disbursements that each trustee shall receive . . .

Mr. BULLEN: Yes. There is no reason to divide the authority.

I come next to section 44 (5). If this subsection means that all the trustee's records, including his accounting, are to be contained in one book, it is impracticable in many instances. It is a mistake to make such an over-all coverage such as this, as the books necessary in one estate may not be suitable, adoptable or sufficient for some other estate. The present section, which requires the keeping of "proper" books, along with the power of supervision given the superintendent, should be sufficient. We feel it is an error to try to cover every situation that might arise in bankruptcy. There are large, small and medium corporations. Some of them take two or three months to wind up, while others take years. An effort to have the section state what books the trustee must keep in connection with every estate is aiming at the impracticable and the impossible. The present section reads to the effect that the trustees shall keep proper books of account, and if any difficulty arose we think the court would decide whether or not the books were proper.

Section 44 (6) says that the estate record book and all other books relating to the administration of an estate shall be the property of the estate.

Hon. Mr. HAYDEN: Have you given a correct interpretation of subsection (5)? It says:—

> The trustee shall keep proper records of the administration of each estate to which he is appointed, which shall include an estate record book . . .

It does not seem to be dogmatic.

Mr. BULLEN: I prefaced my remarks with the statement that if that means the trustee has to keep all his records, including his account, in one book, it is impracticable. I have in mind one winding up, the Canadian Department Stores. That company had a large number of stores all over Ontario, and it would be impossible to keep all the trustees records for a company like that in one book.

Hon. Mr. HUGESSEN: "As prescribed."—what does that mean? The same words are in the old section 55.

Hon. Mr. HAYDEN: Would it be by regulation?

Mr. BULLEN: There are no regulations yet attached to this bill. They might fix that up.

Mr. REILLEY: That is my intention.

Hon. Mr. HUGESSEN: Under subsection 5 of section 44 the books to be kept by the trustee "shall include an estate record book, as prescribed."

Mr. BULLEN: They must be proper books.

Hon. Mr. HAYDEN: That is what it says now. The difficulty is if you leave it as it is you would have books of account containing receipts and disbursements, on top of which you would have to transfer all those entries into an estate record book, unless you made some change in the language.

Mr. BULLEN: I come now to section 53. This is a very important section, as it gives any person dealing with the bankrupt under a conditional sale agreement, hire-receipt or the like, the right to claim his property. What notice is to be given, whether it is to be personal service, in writing, registered or ordinary post should be set out in the bill. This is a lengthy section and deals with the establishment of a claim by a secured creditor. Our suggestion is that the subcommittee should analyse that very carefully for any infringements on the rights of the secured creditor, and the notice to be given should be very clear and specific.

Subsection 5 of section 53 reads:—

> The trustee shall in no case be liable for the costs of establishing a claim to any such property or of such appeal or for any loss or damage suffered by the claimant while such property was in the possession of the trustee or occasioned by such dispute made in good faith.

If the creditor has got a claim, and is dragged into court and substantiates his claim, why should he not be indemnified for proving his claim? The trustee should take some responsibility. If he disputes any claim we feel the creditor should not be burdened with the costs of the proceedings.

Hon. Mr. HAYDEN: In other words, there should be some penalty on him in his representative capacity for any step he takes which proves to be wrong.

The CHAIRMAN: I suppose good faith should be the rule. So the creditor would have to prove bad faith. How can he?

Hon. Mr. LEGER: Does it not mean he is personally liable?

Hon. Mr. HAYDEN: No. I think there must be another section as to that.

The CHAIRMAN: How is one to prove bad faith?

Hon. Mr. HAYDEN: It is a little bit better than some wartime regulations where you cannot even sue.

Mr. BULLEN: Subsection 6 of section 53:—

> No other proceedings shall be instituted to establish a claim to or to recover any right or interest in any such property except as provided in this section.

It seems to us that this is rather dangerous legislation, in that it is curbing the rights of creditors too much and is too wide. The other courts should not be shorn of jurisdiction in such matters. Often points arise in the administration of the bankrupt's estate, and the creditors and the trustee should have the right to go to the other courts, they should not be confined to the Bankruptcy Court on all matters that arise. There are many branches of the law that some judges are better versed in than others. You can get an adjudication on a particular feature that might arise in bankruptcy from one of the circuit judges rather than from the Bankruptcy Court. It is just a consideration whether we should take jurisdiction away from the other courts. I have in my experience often had a judge direct the issue to the other court because he thought it could be better disposed of by a judge there than by himself.

Section 68 deals with preferences. This section replaces section 64, one of the most important sections in the old act. It has been the subject of a long line of jurisprudence which has been established more or less since the inception of the old Assignments and Preferences Act. The whole difficulty in the mind of the draftsman seems to be that in some provinces you are required to prove concurrent intent on the part of the debtor and the creditor, and in other provinces you are not so required. If it is the better part of wisdom that concurrent intent need not be proven, the present section can easily be amended by adding that a creditor shall not have to establish concurrent intent in order to succeed.

It seems a pity, as it were, to junk the line of jurisprudence that has been established over that section. I do not suppose there is any other section of the act that has had more legal interpretation than the section dealing with preferences. Now we have it pretty well dfined by precedents. All those would have to go overboard and we should have to determine what came within the term "transaction" used in this section.

Section 78. This deals with the disbursement of dividends, both interim and final. It is submitted on behalf of the association that the amount and time of payment of dividends is an administrative function that can best be

left with the trustee and the inspectors of the estate, and any interference therewith by the superintendent should be eliminated. Inspectors of the estate do not hold up dividends; they are subsidiary creditors, and in my experience they want their money as quickly as they can get it. Generally speaking the trustees act in good faith, and the inspectors more or less force their hands on the payment of dividends. They can make application to the court if the trustee is not shelling out as they think he should. We feel that that should be left to the trustee and the inspectors.

Hon. Mr. CAMPBELL: Is not this to give inspectors power in extreme cases?

Mr. BULLEN: That may be. That only takes me back to the remark I made a short time ago, Senator Campbell, that as long as we have the present efficient bankruptcy superintendent that is all right, but we do not like to leave something blank on the statute book which might work a hardship on the trustee.

Hon. Mr. HAYDEN: That raises another question. Why should the superintendent have the power; why should it not be the court? Is there any reason one way or the other?

Mr. BULLEN: No. As I say, the inspectors can always apply to the court.

Hon. Mr. HAYDEN: The ordinary procedure would be for the trustee to decide to pay a dividend. Supposing the inspectors say, "Go ahead and pay a dividend." But the trustee may say, "No, I will not pay a dividend." Then you reach a point where some higher authority, whether the court or the superintendent, should give that direction.

Mr. BULLEN: I am wondering, Mr. Chairman, whether I should ask a question on section 68. It occurs to me that possibly the object of the draftsman was to try to take the question of intent out of it altogether. If a transaction occurs following a certain pattern or style, then it is deemed fraudulent and void. This removes the question of intent altogether. Just say that if the transaction happens it is fraudulent and void. This raises a principle that I think we might very well consider,—whether intention should be a factor in determining what is a fraudulent transaction, or whether the transaction itself should be the determining factor. That is the trend in modern legislation, and certainly in wartime legislation.

Hon. Mr. HUGESSEN: The trouble arises under the present section on the interpretation of the words "with a view of giving such creditor a preference." Under the present section fraud is deemed to be the result of giving a preference.

Hon. Mr. HAYDEN: There is no question of intent. That raises the principle.

Hon. Mr. HUGESSEN: Yes.

Mr. BULLEN: Section 82. On this section I have the following note: It is much too wide and interferes with the court's function. A trustee now has to apply to the court, which, it is submitted, is the proper place for his discharge. On that application the superintendent may intercede, and as the trustee has to file his report with the superintendent, it would seem that the better procedure would be to have the trustee continue to apply to the court on notice to the superintendent, and if the superintendent objected to the discharge for any reason he can appear and so state rather than have the trustee await the superintendent's approval at his convenience. Courts are always available and officials are not.

This section conflicts with the power of the court and the discretion of inspectors and creditors in that the superintendent under subsection 2 thereof may reduce or disallow any charges which to him appear unreasonable or excessive. In other words, the superintendent is put in a position where he may veto the discretion of the creditors or inspectors on a matter with which they are actively concerned and there is no review of his veto, if exercised.

That would be the effect of section 82.

Hon. Mr. HAYDEN: Yes. You could overcome your objection in one of two ways: one, give the court that power; the other, give the trustee the right to go to the court over the veto of the superintendent.

Mr. REILLEY: Tha is given, an appeal to the court.

Hon. Mr. HAYDEN: Is that in section 91?

Mr. BULLEN: I am not sure that it is from the way it is worded. That brings up the point of release of the trustee. Probably I am repeating myself to some extent, but I want to make it clear that we are strongly in favour of continuing the present practice of having the trustee discharged by the court. Section 86 of the present Act provides for that, but section 91 of the Bill substitutes the superintendent for the court. I will not take up your time by going all over what I have said as to the court being the forum in which everybody has confidence for the auditing and passing of accounts of officials, liquidators, executors and so on.

Hon. Mr. HUGESSEN: Would it perhaps not be more convenient to have the accounts passed by an official like the superintendent than by the courts?

Mr. BULLEN: We say not, Senator. I have just given one reason. Another reason is this. When a trustee is being discharged his conduct in the administration of the estate and his records have to be gone over, and it is impossible for all that to be done between Ottawa and Vancouver, Ottawa and Edmonton, Ottawa and Halifax, Ottawa and Toronto, or Ottawa and any other place at some distance. We ask, what is wrong with the present method? The trustee comes before the judge, and any creditor or anyone else connected with the bankrupt can appear and say, "You should have done that," or "You should not have done such and such a thing." That is all thrashed out in a day or so; these matters do not take very long, in my experience. Furthermore, the superintendent has his eye on the administration of the estate all the time, and he can make representations to the court. If he notices that a trustee is not acting in good faith or is not administering the estate as he should, he can intervene and make a report to the court.

Hon. Mr. HAYDEN: The right of appeal in section 91 would appear to be a right of appeal by any creditor or by the bankrupt. I do not see any provision for an appeal by the trustee from the Superintendent's determination of his accounts.

Mr. BULLEN: Subsection (7) says:—

> The Superintendent shall consider such objection

That is a creditor's or bankrupt's objection.

> and may grant or withhold a release accordingly or give such directions as he may deem proper in the circumstances.

And subsection (8):—

> Notice of his decision shall be given by the Superintendent by registered mail to the objecting creditor or creditors, bankrupt or trustee, as the case may be, and an appeal therefrom may be filed in the court within ten days of the date of the notice, and the court on such appeal may make such order as it deems just.

It did not appear clear to us from those subsections whether or not it was just in the case of a creditor or bankrupt filing some objections that an appeal lay, or whether an appeal would lie from the discretion exercised by the Superintendent against the trustee. Someone might very well interpret these subsections as meaning that they do not give a right of appeal to the trustee

from a refusal of his discharge by the Superintendent. If the Superintendent is to be given the power to discharge or refuse to discharge the trustee, there should be an appeal available.

Hon. Mr. HUGESSEN: The note opposite section 91 states that the change in the section, whereby the Superintendent rather than the court may release a trustee, was recommended by the Montreal Board of Trade.

Mr. REILLEY: That is the note I have in my file.

Hon. Mr. CAMPBELL: Mr. Chairman, I wonder if we could have a statement from Mr. Reilley as to the reason for this proposed changed. The change seems to me to be far-reaching, and from a practical point of view I do not think it would work nearly as well as the present system of having the application heard in court, where all the parties can appear and present their case.

The CHAIRMAN: Are you prepared to make a statement as to that, Mr. Reilley?

Mr. REILLEY: Mr. Chairman, in order to check on the administration of a trustee it has been necessary for the Superintendent to obtain a statement of the trustee's receipts and disbursements and go through it very analytically, to find out whether or not he has administered the estate properly. In all the time since we have been doing that in my office, going through the accounts and straightening out certain items of disbursements which appeared to us to be unwarranted, I do not think there has ever been a case where a trustee has gone to court and had the accounts changed after we had passed them. The result is simply that we have done all this work and the court has been nothing more than a rubber stamp for what we have done. In fact, in some of the courts there arose the practice of putting on their order a note that the accounts had received the approval of the Superintendent.

Hon. Mr. CAMPBELL: Do you make an audit of the accounts before the court does?

Mr. REILLEY: Yes. We have to go through the trustee's statement and check the expenses in order to know whether the estate is administered properly.

Hon. Mr. CAMPBELL: That is done before it goes to the court?

Mr. REILLEY: Yes. And in the thirteen years of my experience there has never been one case where the court has objected to the accounts after our approval. So the present system means duplication. In England the Inspector General of Bankruptcy, under the Board of Trade, passes on the trustees' accounts. The reason why we adopted a different system was that when our Act was first passed there was no Superintendent of Bankruptcy in Canada or any other official who could pass on accounts, so this work was assigned to the courts. What is proposed now is the adoption of the system that has been followed in England for so long.

Hon. Mr. CAMPBELL: Why would it not be well to leave the court with the apparent authority that it now has to audit accounts, if that would satisfy the public?

Mr. REILLEY: It would be only a duplication of work.

Hon. Mr. CAMPBELL: Not necessarily, if a right of appeal is provided.

Mr. REILLEY: I am quite agreeable to that. I want the Committee to understand that so far as I am concerned I think the discretion of the Superintendent in any matter of this sort should be subject to appeal to the court. I am not trying to set up the Superintendent as an arbitrary bureaucratic official from whose decisions there should be no appeal. I would be the first one to say, "Yes, provide for the right of appeal to the court from the discretion of the Superintendent in such matters." But to go to the court for the passing of accounts after the Superintendent has done all the work in connection with it is merely a duplication of work.

Hon. Mr. CAMPBELL: The reason why I suggest that you might still leave the right to go to the court is that I think there is in our legislation to-day a tendency to rob the courts of power and authority, but I believe the people over the country are far more satisfied to have the court as the final tribunal in matters of this kind. Probably a right of appeal would be sufficient. Do you have the parties appear before you at the time the audit is made, or is that done by correspondence?

Mr. REILLEY: It is done by correspondence, and we get along well. There has never yet been any occasion when we have not arrived at a satisfactory adjustment of accounts, except perhaps in a few odd cases where the differences were such that I simply told the trustee he had to take the matter to the court; and in every such case the court decided the matter at issue. But otherwise, in 999 cases out of 1,000, the matter is adjusted satisfactorily by correspondence. We ask for explanations on this point and that when necessary, and eventually the thing is ironed out and the trustee is notified that there is no objection to his statement and that he can go ahead.

Hon. Mr. HUGESSEN: Normally, then, he does not apply to the court until he has received your O.K.?

Mr. REILLEY: No.

Hon. Mr. HUGESSEN: And normally the court will not hear him until it knows that he has received your O.K., is that it?

Mr. REILLEY: Very often that is the case.

Hon. Mr. GERSHAW: Does the application to the court increase the costs in these matters?

Hon. Mr. HAYDEN: A negligible amount, I should imagine.

Mr. REILLEY: The costs would not be increased by one cent by the application to the Superintendent, because in my office I have a staff to check these statements as they come in.

Hon. Mr. GERSHAW: My question was whether the application to the court would increase the costs in the action.

Mr. REILLEY: Yes.

Hon. Mr. GERSHAW: By any appreciable amount?

Mr. REILLEY: Well, they would be increased by the amount of the fees that the court collects, which on the average amount to about $9 or $10.

Mr. BULLEN: May I say to Mr. Reilley through you, Mr. Chairman, just what section in the bill requires approval of the superintendent, so that I can deal with that. I cannot find it.

Mr. REILLEY: There is nothing in the act to that effect, and that is why it was put in subsection (*g*) that you referred to previously.

Hon. Mr. HAYDEN: The practice has developed by reason of the attitude taken by the judge on the hearing.

Mr. BULLEN: I could not find in the act anything requiring the superintendent's approval. Our main objection is that it is impracticable. We would have to come to Ottawa before we could get approval of the superintendent.

Hon. Mr. HUGESSEN: That is already done now.

Mr. REILLEY: Yes. There is no difficulty whatever in getting the necessary records. They are merely sent by mail in a small parcel. Any part of the country is within one day of Ottawa practically. As a matter of fact Vancouver is no further from my office than Fort Frances is from Toronto. The question of distance does not enter into it at all.

Hon. Mr. HAYDEN: It was not the question of distance that I understood was raised; it was the question of the bulkiness of the records.

Mr. REILLEY: That does not enter into the picture at all.

Mr. BULLEN: May I reiterate that we do feel that if you leave it open to have the superintendent grant the discharge that it does and will leave it open for delay and confusion in getting the records down here. One knows that air-mail can go from Ottawa to Vancouver in a day, and that sort of thing, but bulky records do not come by air-mail. We suggest that the important matter of discharging the trustee should be left where it is now, in the hands of the courts: (*a*) because the general public, creditors, debtors, trustees and everybody else have more respect for the court and what the court does than for any administrative official. The more you can keep regulations dealing with the commercial relationship of individuals before the court the more those individuals will be pleased with it.

Hon. Mr. CAMPBELL: Mr. Bullen, I have not had much bankruptcy experience in recent years—

Mr. BULLEN: Nobody has in recent years. I think there were only three bankruptcies last year.

Hon. Mr. CAMPBELL: Do you not sometimes find creditors or persons interested in the estate appear when an application is made for discharge of the trustee and make representations why he should not be discharged?

Mr. BULLEN: Yes. He cannot do that without the superintendent. He will have to write and there will be more correspondence. He will be asked: What is your claim, what is your difficulty, why are you disgruntled, why should he not be discharged? Whereas if the application is made to the court everybody can come there, it is an open forum, and make whatever representations may be considered necessary.

Hon. Mr. CAMPBELL: Is the creditor entitled to notice?

Mr. BULLEN: The creditor is entitled to notice at the present time on discharge of the debtor and the discharge of the trustee.

Section 91, subsection 6. This subsection provides for creditors filing objections, but no provision seems to be made for the trustee to have an opportunity of answering or meeting them. This is the subsection:

> Any creditor or bankrupt desiring to object to the release of a trustee shall forward to the Superintendent and to the trustee, not less than two days before the date fixed for the release of the trustee, particulars in writing of his objection.

A creditor may file objections that may not have any merit in them at all, yet there is no direction that the trustee shall answer them.

Hon. Mr. LEGER: Would he not have an inherent right to answer?

Mr. BULLEN: He may not have the time.

Hon. Mr. LEGER: It is two days.

Mr. BULLEN: It is not less than two days before the date fixed for the release of the trustee.

Hon. Mr. LEGER: It is the time you object to?

Mr. BULLEN: It comes down to that. I think he should have lots of time to answer.

The CHAIRMAN: Should we not understand that the superintendent receiving the objection would communicate with the trustee?

Hon. Mr. HAYDEN: Only if he feels any consideration should be given to the objection I would think.

The CHAIRMAN: If he gives it consideration he might communicate with the trustee.

Hon. Mr. HAYDEN: Yes.

Mr. REILLEY: May I say, gentlemen, that in our practice in the office we get innumerable objections of all sorts from the creditors with regard to the administration of the estate. Sometimes we do correspond with the trustee to find out what he has to say about the objections, but in nine cases out of ten we know enough about the matter to say that there is nothing in the objections, in which case we dispose of them without communicating with the trustee. But if in any objection there is anything which we cannot dispose of in that way, it would be unreasonable to make a ruling without giving the trustee an opportunity to make a statement.

Hon. Mr. HAYDEN: There can be no objection to giving that right?

Mr. REILLEY: Absolutely not. It is difficult to think of everything when preparing a draft bill. I would be the first to want to have it included.

Mr. BULLEN: Section 105, subsection 3. The present act defines those who are not entitled to vote and is clearer than naming any degree of relationship. The subsection reads:

> The following persons shall not be entitled to vote on the appointment of a trustee or inspectors, namely:
>
> (i) any person related to the bankrupt to the third degree by blood or marriage, or a partner of the bankrupt or any person associated with the bankrupt or a member in any co-operative undertaking.

The subsection in the Act reads:

> The following persons shall not be entitled to vote on the appointment of a trustee, namely:
>
> (i) the father, mother, son, daughter, sister, brother, uncle or aunt by blood or marriage, wife or husband of the bankrupt or authorized assignor.

Hon. Mr. HAYDEN: What does "associated with the bankrupt" mean?

Mr. BULLEN: We do not know. We think it better to retain the wording in the present act. When you say father, mother, son, daughter, sister, brother, uncle or aunt by blood or marriage, you know who are excluded.

Section 108, subsection 2. This subsection gives the shareholders the right to vote for the appointment of inspectors. In view of the fact that the shareholders constitute the "debtor" in such a case, we think they should not have the opportunity of outvoting the creditors as to who the inspector of the estate should be.

Section 110, subsection 2. This reads:—

> A debt may be proved by delivery or sending through the post in a prepaid and registered letter to the trustee, a proof of claim in the prescribed form or to the like effect verified by the creditor as being true in substance and in fact.

That eliminates the swearing of an affidavit by the creditor on his filing his proof of claim. We think if you do away with the affidavit in connection with the filing of the claim it would lead to untold trouble. Certain groups of individuals might file claims that are not so, but they would probably back up at swearing an affidavit. Of course, we know that some people won't back up. I can't help digressing here to tell this story. A chap walked into his friend's office and inquired, "Are you ready for your game of golf?" His friend replied, "Wait a moment," and he started to sign his name to letter after letter without reading them through. The chap said, "My God! You don't mean to say that you let letters go out of the office without reading them?" "Letters? I thought they were affidavits."

In his explanatory note to this subsection the draftsman said:—

> This subsection is changed to remove the necessity of every claim being made in the form of an affidavit.

We think claims should be filed in the form of affidavits, because after all, I don't care how bad a man may be, if he is going to swear to an affidavit that is false he knows he may have to face a charge of perjury. If he knows he can file a claim and nothing will happen to him he will say, "I will see if the trustee or trustees will let my claim go through." We think the affidavit feature of the claim should be retained.

Section 110, subsection 5. This seems a bit drastic to the association. The subsection reads:—

> The proof of claim shall state whether the creditor is or is not a secured or preferred creditor, otherwise the claim shall be deemed to be unsecured and not secured or preferred.

It is rather drastic to take away from the creditor his status if by reason of some error he puts his claim on an ordinary form and has not said, "I have a certain security or stand in a certain preferred class."

The CHAIRMAN: You do not see any possible correction to that? If he makes an error he is just out.

Mr. BULLEN: It says so. "The proof of claim shall state whether the creditor is or is not a secured or preferred creditor, otherwise the claim shall be deemed to be unsecured and not secured or preferred."

Hon. Mr. HUGESSEN: It is the "otherwise" that you object to?

Mr. BULLEN: Yes.

Hon. Mr. HAYDEN: If it stopped at the word "otherwise" it would be all right?

Mr. BULLEN: Yes.

Section 118. This is too drastic. There appears to be no good reason why a secured creditor should not get his costs of realizing his security or collection charges.

The CHAIRMAN: That is similar to the remark you have already made that a man's claim may be refused for some reason.

Mr. BULLEN: Oftentimes you will have a bank in this position. They say, "We have got an assignment of book debts here. There is evidently going to be a surplus, but we don't want to be bothered collecting these book debts. You have all the records of the debtor, you are winding up the estate, you are administering it. Collect these book debts and pay us the amount of our claims." That is what they will say to the trustee. This would eliminate what the bank pay for the collection. They should not be out that cost.

Hon. Mr. HAYDEN: Section 111 is retained in the bill. It reads:—

> If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.

That is a case where he realizes on the security itself, so I take it he would charge the cost of realization against the proceeds.

The next general section I want to come to is section 125, which deals with admission and disallowance of claims. It is submitted that the present sections dealing with this phase of bankruptcy are more satisfactory than this suggested section obligating the trustee to notify all creditors whose claims have been admitted. The trustee is generally not in a position either to consider or get advice in connection with all claims until quite some time after proceedings have started, and it would not be good practice to have him create an estoppel against himself by admitting a claim that later investigation during the bank-

ruptcy administration would indicate should be disputed. Little harm or inconvenience is done a creditor if he hears nothing of his claim, for he knows that if it is a bona fide claim, as by far the great majority of claims are, it will not be disputed. It is submitted that it would not be good practice to have the trustee lose his right to dispute a claim at any time before the first dividend is sent out.

Hon. Mr. HAYDEN: Why not?

Mr. BULLEN: Why should there be a time, Senator, when the trustee's right to dispute a claim is cut off?

Hon. Mr. HAYDEN: The creditor is recognized as a creditor in the proceedings and he has a right to vote. Surely that is an important right, and one that he should not have if he is not a creditor. So why should his status as a creditor not be determined as early as possible. If it appears later that there is any fraud in his claim, the fact that the trustee has admitted the claim would not prevent him from disallowing it afterwards.

Hon. Mr. HUGESSEN: Nor would the trustee be bound if a mistake had been made.

Mr. BULLEN: It sometimes takes a trustee many months to determine all claims. I can recall some stockbrokers' assignments in the city of Toronto where it took years to establish what were good and what were bad claims. If the trustee has to notify every creditor as soon as his claim has been admitted, the trustee might find himself in great difficulty later on if it should develop that some of these claims are not good. I do not think that any creditor who files a legitimate claim is injuriously affected by the present system.

The CHAIRMAN: There is the possibility that a creditor who received a trustee's certificate that his claim was admitted might sell that claim to another party, and later on that claim might be found to be no good.

Mr. BULLEN: Then the innocent purchaser or assignee of the claim would be before the court.

Hon. Mr. HAYDEN: I wonder if what is suggested here should not be applied in reverse? In other words, should the trustee not notify as early as possible every creditor whose claim is to be disallowed?

Mr. BULLEN: The trustee does notify every creditor whose claim is disputed.

Hon. Mr. HAYDEN: That should be done as soon as may be reasonable.

Mr. BULLEN: Yes. It would seem to be the better part of wisdom, I suggest, to notify as early as possible every creditor whose claim is disputed. Difficulty is bound to arise if the trustee, before he knows just what the situation is, notifies creditors that their claims have been admitted.

The next section that we comment on is 146, which deals with the discharge of the bankrupt. Under the present act a bankrupt applies for his discharge after the administration of the estate. A report is made by the trustee to the court, the creditors are notified, and the court discharges the bankrupt. That practice has had the test of some twenty years, and we have not heard much complaint about it. The draftsman seems to suggest that the difficulty with that practice is, that, first of all, the bankrupt does not know his legal status, does not understand that he can get a discharge; and, secondly, that the procedure is expensive. We suggest that these difficulties do not warrant the radical change proposed in the new section. We submit that, generally speaking, a man who gets as far as the bankruptcy court knows how he can get out, or what he should do to get out. Then, in my experience, the main item of expense in obtaining a discharge is counsel fees. If this section is included in the act the bankrupt will still have the opportunity to retain counsel, so that item of expense will not be eliminated. Again, the time for application suggested by the draftsman is much too short. The administration of a bankrupt estate of any size takes

much longer than six months, and in a great many instances the trustee is in no position to make the report that is required by the court as to conduct of the bankrupt or what his estate will pay. In the discharge of a bankrupt, according to my experience, the court is governed chiefly by the report of the trustee as to the conduct of the bankrupt. If the trustee makes a favourable report on the bankrupt, says that the bankruptcy has been brought about by conditions over which the bankrupt had no control, that he has given the trustee every assistance and has not committed any of the offences enumerated in the act, the court generally gives the discharge. We think that from the standpoint of the bankrupt and the trustee it is better not to have the act changed in the way proposed here.

I pass to section 160, which deals with decentralization of the work of the courts. This section proposes that the Registrars, clerks and prothonotaries of the courts having jurisdiction in bankruptcy, and their deputies and assistants be given the powers of a registrar. The powers of a Registrar are enumerated in section 167 of the bill; they are wider than the present powers of the Registrar and are very important. As far as Ontario is concerned, the suggested widening of jurisdiction would mean that the powers and duties exercised by the present Registrar at Osgoode Hall would be spread among a number of officials in some 47 counties and judicial districts. We think that would lead to a great diversity of opinion, judgments, orders, regulations and interpretations of the law; in fact, it is only common sense to expect that it would.

There is another feature. Bankruptcy work, as I said before, is more or less a special branch of the law, and has become centralized in or about the larger metropolitan areas where the wholesalers and manufacturers who distribute to the retailers are situated. This has resulted in certain men becoming specialists in bankruptcy law, such as Mr. Justice Urquhart, the Judge of the Bankruptcy Court of Ontario, and Mr. Gordon Cook, the Registrar at Toronto. They get a broad experience which a man in, say, Timmins, or L'Orignal or Fort Frances could never get. We think it would not be good legislation to decentralize the powers of the Registrar.

Then again, we have at Osgoode Hall, Toronto, a central registry, where all the records for the province are kept. One can go there and make a search with respect to any person or company, wherever located in the province. In that way there is less possibility of error than if a search had to be conducted at various places.

The CHAIRMAN: Might that objection be overcome by having reports sent from the various districts to a central registry office, where searches could be made?

Mr. BULLEN: That might be done, Mr. Chairman. I believe that is the practice in connection with surrogate matters. I am not sure, for that is not in my particular branch of the law, but I believe that wills and letters of administration and so on are sent from all over the province to Osgoode Hall. Mr. Sheard would probably be able to make a statement as to that.

However, this is a subsidiary point. Our main objection to that is that you have got there room for a diversity of action under the Bankruptcy Act, and it will not tend to have the uniformity that it should have.

The CHAIRMAN: Would Mr. Reilley care to answer the suggestion right now?

Mr. REILLEY: My comment, Mr. Chairman, is simply this. In the different provinces you have different ways of dealing with the matter. It is left to the Chief Justice of the province to appoint such registrars as he sees fit. In some provinces the Chief Justice appoints every registrar of the District Courts as a bankruptcy registrar, and in my thirteen years' experience I have never heard of any objections being raised that have been raised here to-day. Take Kamloops, Fort George, Prince Albert, all up through that country, in each case the

registrar of the Civil Court is registrar in bankruptcy, and they all do their work in a satisfactory way. I do not think for a moment that the registrars in Ontario are all numbskulls and cannot deal with bankruptcy as well as the registrar in Toronto or any other place. You have a registrar in bankruptcy sitting in Hull. There is no registrar in bankruptcy in Ottawa. There are some seventeen registrars in bankruptcy throughout Quebec. We have only one for the province of Ontario. The same thing obtains in Nova Scotia, New Brunswick, Manitoba, Saskatchewan—they have only one registrar in the centre of the province. In the other provinces where the work is performed by the registrars in the various judicial districts they get on all right with their bankruptcy work just the same as with their other work. If they can do all the work connected with the Criminal Code, and if they can do all the work connected with the Companies Creditors' Arrangement Act, which is bankruptcy or insolvency legislation, is there any reason why, with the help of the superintendent's office when they want information, they cannot do the work required of them under the Bankruptcy Act? Besides—and I say this as emphatically as I can—it is wrong in principle that any time any little matter in bankruptcy has to come before the court a solicitor should have to write from Fort Frances, Ottawa, or any other place and have it all done in Toronto.

Hon. Mr. HAYDEN: You mean there must be a better objection than just mere geography?

Mr. REILLEY: That is one objection and a good objection, because the very contention made here to-day with regard to time and distance applies in this case. Suppose you want a stock order in a For Frances bankruptcy matter, you have to go a thousand miles to Toronto to get it. It is not reasonable. I do not admit for one moment that the officials throughout the various judicial districts of the province are not capable of handling these matters in bankruptcy just as well as other civil matters.

The CHAIRMAN: Will you proceed, Mr. Bullen?

Mr. BULLEN: I am wondering how under this bill anyone filing a petition in bankruptcy in Fort Frances would get it adjudicated if it was disputed. The judge goes around twice a year.

Mr. REILLEY: That would have to be worked out. There are other ways of doing it perhaps, but it is done in British Columbia. How is a petition filed at Prince Rupert or Fort George dealt with?

Mr. BULLEN: If it is disputed.

Mr. REILLEY: They deal with it there and apparently satisfactorily. I grant it is a serious matter in most cases, but surely it is not beyond the competence of a county court judge. In England, outside of London practically all bankruptcy is handled by the county court judges.

Hon. Mr. HAYDEN: When Mr. Justice Urquhart was before us the other day he said that the county court judges were capable of dealing with bankruptcy offences, and he was criticizing the bill because you were trying to push them all on the Supreme Court judges.

Mr. REILLEY: To meet this objection I am quite willing that jurisdiction be given the county court judges, where the Supreme Court judges are not available.

The CHAIRMAN: Would it be possible to have the Attorney General in each province define the setup. He is a good judge of judicial ability.

Mr. BULLEN: It is left to the Supreme Court judge now.

Mr. REILLEY: We shall have to decide how to deal with it.

Mr. BULLEN: Thank you very kindly, Mr. Chairman and gentlemen. I did not intend to take up so much of your time.

The CHAIRMAN: We thank you, Mr. Bullen, for your assistance.

We will now hear from Mr. R. O. Daly, K.C.

Mr. DALY: Mr. Chairman, I am representing the Investment Dealers Association of Canada. As you know, this is a country-wide organization comprising investment houses in Canada engaged in the distribution of government, municipal and corporation securities. Naturally when an investment house puts out an issue of securities it confidently expects or at least hopes that nothing will ever go wrong with that issue. It scrutinizes the present financial position of the company and its future prospects, and trusts that the issue will survive all the vicissitudes of time. But conditions change, management becomes inefficient, wars come, depressions come and the burden of debt gets too heavy for the company to carry. Then a financial reorganization is necessary. That is why the members of our association are particularly concerned in seeing that there is an efficient method of carrying out corporate reorganizations; and that is why also we are concerned with the provisions of the proposed statute.

My remarks will be directed purely to part 2 of the bill dealing with company reorganizations. As I understand it, this bill would transfer to the Bankruptcy Act and exclusively to the Bankruptcy Act the machinery for carrying out corporate reorganizations, and eliminate the existing machinery otherwise available, including the present machinery under the Companies Creditors Arrangement Act. Anyway, I take that to be the meaning of section 19, subsection 6, which reads:

> Any composition, arrangement or settlement made by an insolvent person with his creditors generally otherwise than under the provisions of this Act unless the creditors unanimously agree thereto—

which of course is too much to be hoped for.

> —shall be voidable by the court on the application of any creditor.

I have prepared a short statement, and I think I can be less discursive if I read it.

The principal reason for the proposed change appears to be the desirability of eliminating certain alleged abuses of the existing machinery under the Companies' Creditors Arrangement Act by virtue of which, in some cases, ordinary unsecured trade creditors have been defrauded, and of preventing compositions being carried out by companies or individuals with their ordinary creditors without the intervention of a trustee in bankruptcy to supervise the proceedings and to protect unsecured creditors against lack of full disclosure of the financial position of the debtor and against such other undesirable practices as may have arisen.

However desirable it may be to eliminate such abuses against ordinary creditors in relatively small trading companies, it is equally desirable to see that nothing is done to impair the machinery for carrying out corporate reorganizations in companies where the investing public is concerned and where there may be various classes of creditors, both secured and unsecured, as well as different classes of shareholders, both common and preferred. The members of the Investment Dealers' Association of Canada do not come into professional contact with the small trading company where there is no public investment interest but are primarily concerned only with those companies which have bonds of one or more classes and shares of one or more classes in the hands of the investing public. In the reorganizations of such companies it frequently happens that there is no proposal at all to cut down the principle amount of the claims of unsecured creditors. Hitherto reorganizations of such companies whose securities are in the hands of the public have been carried out as to the rights of shareholders under the arrangement sections of the relevant Companies

Acts of the Dominion and the Provinces and so far as bondholders are concerned under the trust deeds securing such bonds or under the Companies' Creditors Arrangement Act where it is necessary or desirable to take advantage of the latter statute.

The Companies' Creditors Arrangement Act has been in force since 1933 and is based on similar legislation which has been in force in England for many years. Its constitutionality has been upheld in the courts, and jurisprudence and procedure has been developed over the years both here and in England which it would be unwise to disturb. The procedure for obtaining the approval of the various classes of creditors is carried out under the supervision of the court and the reorganization before becoming effective must be approved by the court. In most cases the proposed plan of reorganization is worked out over a period of many months as a result of discussions between the company and committees, either formal or informal, of the classes of creditors, and shareholders concerned, the trustees under the trust deeds securing the various classes of bonds, and the investment dealer through whom the securities were originally distributed. The creditors have both the protection of the court and the guidance and protection of their own committees or representatives and have ready access to the financial records of the company. Fundamentally, therefore, there seems to be no objection in principle to a continuation of the present course of company reorganization under the Companies' Creditors Arrangement Act, and, in fact, there seems every reason why the present procedure should be continued in the case of reorganizations of the bond and share structure of companies whose securities are in the hands of the public. On the other hand, it is alleged that certain smaller companies whose creditors are for the most part ordinary unsecured creditors have used the provisions of the Act to defeat or defraud their creditors. If this is the case, it is submitted that the better procedure is to introduce amendments into the Companies' Creditors Arrangement Act to correct such abuses rather than to scrap the Companies' Creditors Arrangement Act and substitute for it the contemplated provisions in the Bankruptcy Act which might work in the case of small trading companies with no securities in the hands of the public but which would not be workable in the case of large companies where the rights of various classes of creditors, both secured and unsecured, may be involved. The Investment Dealers' Association of Canada would be glad to co-operate with the Superintendent in Bankruptcy and with others concerned, in an effort to devise such amendments as would be necessary to eliminate such abuses as have come to the attention of the Superintendent.

It is submitted, therefore:

1. For a great number of years, corporate reorganizations involving hundreds of millions of dollars have been successfully carried out, as to shares, under the provisions of the Companies Acts, and as to bonds, under the provisions of the trust deeds securing the bonds, and in many cases, under the Companies' Creditors Arrangement Act as to creditors, both secured and unsecured, where it has been necessary or desirable to take advantage of the provisions of that statute; for example, the recent reorganization of the Abitibi Company.

The provisions of section 19 (6) of the proposed Act appear to contemplate that the Companies' Creditors Arrangement Act will no longer be available for the purpose of carrying out a corporate reorganization and appear to be sufficiently wide even to cast doubt on the propriety of a modification of the rights of bondholders under the provisions of the trust deed under which the bonds have been issued.

Well-established legal procedure for carrying out corporate reorganizations should not be disturbed except for the most compelling reasons and then only after the most careful consideration. The Companies' Creditors Arrangement Act was not enacted for the purpose of dealing with the rights of unsecured creditors except where incidental to a modification of the rights of secured creditors such as

bondholders, but if companies have been using the provisions of the Act for the purpose of defrauding their unsecured creditors, the proper procedure would appear to be to amend the Act to correct such abuses rather than to eliminate an Act which has functioned smoothly and without criticism in the great majority of corporate reorganizations.

2. The proposed provisions of the Bankruptcy Act are not adequate to deal with the more elaborate capital structures of the larger companies where one or more classes of bondholders and one or more closses of shareholders and possibly unsecured creditors as well may be involved. The proposed provisions contemplate a general meeting of creditors and a valuation of their securities and such machinery could not possibly be applied in the case of a reorganization of a company having outstanding two or three classes of bondholders with the great bulk of the bonds in bearer form. Moreover, where corporate reorganizations have already been worked out through the careful studies and investigations of the various groups concerned, the proposed provisions involve unnecessary delay and expense.

3. That proposed Part II of the Bankruptcy Act should be limited to provisions calculated to correct whatever abuses may presently exist in connection with compositions with creditors (either before or after bankruptcy) where there are no outstanding securities, either bonds or shares, in the hands of the public which are affected by the reorganization scheme.

4. The new provisions relating to corporate reorganizations should be eliminated from the proposed provisions of the Bankruptcy Act and the machinery of the Companies' Creditors Arrangement Act should be maintained intact and concurrently in force (subject to such amendments as might appear desirable to correct any abuses against ordinary creditors) to deal, in conjunction with the Dominion and Provincial Companies Acts, with the capital structures of the larger companies where the interests of one or more classes of secured creditors may be involved. This would maintain the present practice under which the meetings of the various classes of creditors are called by the court itself and this practice would appear to be more desirable and more in the interests of uniformity of procedure than the calling of meetings of creditors by a trustee in bankruptcy as contemplated by the proposed provisions of the new Bankruptcy Act.

5. To the extent that abuses of the present machinery exist, the obvious procedure appears to be to introduce any essential amendments in the Companies' Creditors Arrangement Act rather than to repeal an Act which, in the main, has worked satisfactorily, and to replace it with legislation which appears to be neither necessary nor adequate to deal with corporate reorganizations involving an adjustment of the rights of various classes of bondholders and shareholders.

Respectfully submitted.

Hon. Mr. HAYDEN: Have you seen the suggested amendments of the Dominion Mortgage and Investments Association?

Mr. DALY. I glanced through them, Senator. I have not had time to study them carefully.

Hon. Mr. HAYDEN: Do they deal with and correct the points that you think should be corrected to make the Companies' Creditors Arrangement Act more effective?

Mr. DALY: I think they are very comprehensive. Mr. Reilley could tell us just what he is trying to correct.

Hon. Mr. HAYDEN: We can get that from Mr. Reilley.

Hon. Mr. CAMPBELL: Mr. Daly, I understand that you are definitely opposed to putting in this act provisions which would take the place of present provisions of the Companies' Creditors Arrangement Act?

Mr. DALY: Yes, sir.

Hon. Mr. CAMPBELL: That act, you say, should be left as it is?

Mr. DALY: That act should be left intact.

Hon. Mr. MCGUIRE: Have you copies of your statement to distribute?

Mr. DALY: No, Senator, I have none available.

The CHAIRMAN: The statement will appear in the report of our proceedings.

Thank you very much, Mr. Daly, for coming here and giving us the benefit of your views.

Hon. Mr. HAYDEN: Mr. Terence Sheard is here and I understand is ready to answer questions, if there are any.

Mr. TERENCE SHEARD: Mr. Chairman, at the committee's meeting last Thursday we presented a draft bill to amend the Companies Creditors' Arrangement Act, and we said then that we would be available to-day if any member of the committee wished to ask questions about that bill. If there are no questions to-day, we shall be available whenever we may be required.

The CHAIRMAN: Thank you, Mr. Sheard. I do not believe we are in a position to question you about the bill to-day, but we shall notify you later if we wish to go into this.

The committee adjourned until 8 p.m.

The committee resumed at 8 p.m.

The CHAIRMAN: I think you are already introduced, Mr. Crysler. Will you proceed.

Mr. A. C. CRYSLER (Legal Secretary, Board of Trade, Toronto): Mr. Chairman and gentlemen, as you probably know, I am the legal secretary to the Board of Trade in Toronto. The text of our brief is before you. If it would be agreeable to the committee I might save you some time to-night and perhaps make our real purpose even clearer if, instead of reading the brief, I ask that it be filed for reference later on and content myself with speaking to a few of what we think the more important parts of it.

The CHAIRMAN: All right.

Mr. CRYSLER: If you will refer to the opening paragraph on page 1 of the brief you will find that we tell you a little bit about who we are. We have a membership of some 4,000, principally drawn from Toronto and the surrounding district. We draw our membership from every walk of business and professional life, both large and small.

When Senate Bill A5 was received, we bore in mind that we have three classes of members particularly interested. First of all, unsecured creditors—business firms with trade accounts; secondly, secured creditors—such as insurance companies, trust companies, banks and so forth. In that connection our membership also comprises certain of the larger trust companies, whose duties are to carry out the large financial reorganizations which are encountered under the Companies Creditors' Arrangement Act. Thirdly, licensed trustees.

Under those circumstances we could not present anything to this committee which did not carry the approval of all those groups. We got together a small subcommittee of the most outstanding gentlemen in those groups, and they prepared what is now before you. The brief was eventually approved by the council of the Board of Trade and it is our submission to you.

Before going into the submission, I might mention that some of the things proposed in the bill we approve; some we do not approve. The things that we do not approve fall mainly into two classifications: No. 1, extension of the traditional bankruptcy field into wider areas; No. 2, increasing the power and centralization of the administration of bankruptcy.

To guard against any possible misunderstanding, I should like at once to make it perfectly clear that we do not wish our remarks to be taken as in the

slightest reflecting on the present bankruptcy officials. You will see that in certain places in the brief we express our complete satisfaction with the manner in which bankruptcy is administered. We have certain reasons for not wanting to go further. Among those reasons are the consideration that the present officials just by the lapse of time cannot always be with us, and we do not know who may be put in their place. We hope of course that they will be equally able men, but we do not know. So when this act is amended we should like to feel that it will be on a rational workable basis, conforming to the underlying principles, and as thoroughly practicable an instrument, apart from the influence of personalities, as can be devised.

The first subject I should like to speak about in the bill is the basis of voting. You will find that that comes up in two places: the voting on special resolutions under section 2 (gg); and concerning the acceptance of proposals under section 15. The point we have in mind is the same in each case and I will cover it by speaking to section 15 only. This section will be found at page 16 of the bill. Starting at the third line, it reads:—

> —with proven claims of twenty-five dollars or over, and holding three-quarters in amount of all such proven claims of creditors or class of creditors, as the case may be, insofar as the proposal affects any such class, present in person or by proxy,—

We are not sure whether the qualification "present in person or by proxy" modifies only " holding three-quarters", or whether it also modifies "a majority in number." We think it should apply to both, and in our brief we suggest that the section be further clarified by simply repeating in each case the words "in person or by proxy." The clause would then read something like this:

> A majority in number of all the creditors holding proven claims of twenty-five dollars or over, present in person of by proxy in voting, and seventy-five per cent in amount of those present in person or by proxy in voting.

The next point I should like to touch upon comes under the general heading of Changes in Wording. Of course no such revision of legislation as is contained in the bill can be carried out without many changes in wording, but there are two points in the bill on which there are a considerable number of judicial cases and quite a body of settled law. Those points are, first, the definition of "transaction" which is proposed in section 2 (jj) and the new section concerning avoidance of preferences mentioned in section 68. With regard to section 2 (jj) there will be a number of words, such as contracts, gifts, deliveries, settlements, and so forth, no longer used. We are not sure whether the settled law that has been built up on those words, no longer to be used, will be carried forward to the use of the word "transaction." If they are the change would be good. We do not advance ourselves as a committee of lawyers, and therefore we do not profess to know the answer. We do ask, however, that the purely legal side of that matter be looked into, and that all necessary steps be taken to avoid any undue lack of settlement of jurisdiction and jurisprudence.

Many of the same points apply in section 68 of the bill, concerning avoidance of certain preferences. With regard to that section of the bill we notice that the principal difficulties indicated to date seem to have been the divergence of view on the necessity for concurrent or unilateral intent. Rather than using the new section 68 we would favour retaining the old section with simply an addition to that section providing that within the three months' period it would not be necessary for the trustee or creditors attacking an alleged preference to show concurrent intent.

I should like next to touch briefly on three of the new clauses under acts of bankruptcy. Section 3 (d) reads as follows:—

> If in Canada or elsewhere he makes any conveyance, or transfer of his property, or of any part thereof, or creates any charge thereon, which would have the effect of defrauding, delaying or defeating his creditors or any of them;

We understand quite well the purpose of that section, but we are afraid that its terms are so broad that they may cast a legal cloud over what we would regard as legitimate transactions, and we suggest the advisability of legal scrutiny to see that no such results should follows.

Section 3 (i) reads:

> If he makes any bulk sale of his goods under the provisions of any Bulk Sales Act applicable to such goods in force in the province within which he carries on business or within which such goods are at the time of such bulk sale wherein the sale price will not be sufficient to pay his creditors in full;

The point there, gentlemen, is that we are told by trade creditors that very often one of their merchant outlets get into some sort of financial difficulty where it becomes apparent that they are not going to be able to pay their creditors in full and continue in business. Under those circumstances the cheapest and most efficient way of liquidating that business is a bulk sale under the provincial laws. Many people, in a wholesaler's business, would wish to see that privilege of effecting a bulk sale retained; and, therefore, we think that if a bulk sale complies with the provincial law, which has a reasonable safeguard, it should not be invalidated.

The last paragraph on which I wish to touch is 3 (1), which reads as follows:—

> If he ceases to meet his liabilities generally as they become due, or fails to pay any particular debt or debts after repeated demands for payment.

The point there is "any particular debt". We understand that it has been an underlying principle of bankruptcy jurisdiction that it would not apply where there is only one creditor; he would have his means of remedy through the courts by way of judgment debtor proceedings. There is no question of insuring a rateable or equitable distribution among creditors. Where there are two or more creditors we believe it becomes necessary to follow the traditional practice of administration so that those creditors share equally.

I should like to deal next with petitions by shareholders, found in section 4 (3) of the bill. If you refer to that section, gentlemen, you will see that sub-paragraphs (b) to (f) touch on matters other than insolvency.

Hon. Mr. Hayden: May I ask a question on section 4 (3)? Are you generally opposed to that section?

Mr. Crysler: We are generally opposed, sir. Those sub-paragraphs (b) to (f) touch on matters other than insolvency. For your convenience and reference I might cite a legal case which enters into it. The case is in re Empire Timber, Lumber and Tie Company 1920, 48 O.L.R., 193. The gist of that case, which sums up a considerable line of decisions, is that the Dominion Winding Up Act does not have jurisdiction over non-solvent firms incorporated otherwise than under Dominion laws. We suggest the constitutional feature might be examined in this proposed legislation to see whether there might possibly be danger of creating an enactment which could be a trap in some cases for the unsuspecting who do not realize the constitutional limitation.

Hon. Mr. HAYDEN: You are opposed then in that respect?

Mr. CRYSLER: In non-solvent cases.

Hon. Mr. HAYDEN: You are opposed generally to bringing in the field covered at present by the Companies' Creditors Arrangement Act?

Mr. CRYSLER: That is quite right.

Hon. Mr. HAYDEN: Then that covers the whole point.

Mr. CRYSLER: That covers the whole point. As regards sub-paragraph (a) of section 4 (3), I heard that discussed this morning at some length. It is all summed up under the danger of "the one-share artist who could threaten the life out of a company with one share."

Section 4 (11) provides by silence for the elimination of custodian. We are agreeable to that. As we understand bankruptcy proceedings there is not a sufficient function left for the custodian to justify the continuance of that officer. Likewise, we approve the provision for the petition against the estates of deceased persons. There is, however, a matter that I should like to draw to your attention. Section 5 of the bill commences to read as follows:—

> Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition—

We understand the meaning of that paragraph, but we think that it would be advisable if some additional wording was put in to insure that the clause is only operative when the estate is actually insolvent. There should be a few words there to complete the intention.

Hon. Mr. HAYDEN: Then you approve of that section?

Mr. CRYSLER: Generally, we approve of that section, subject to clarification. We also approve of the clarification of the powers of the interim receiver.

Dealing with the question of assignments, which we find in sections 9 and 10 there are a few comments to be made. Section 9 (2) as you will see provides for assignments by corporations other than for debts. The remarks that I made a moment ago in connection with petitions by shareholders, and in relation to the constitutional feature, can be taken as applying here again, and I do not need to repeat them.

Hon. Mr. HAYDEN: This deals more with winding up.

Mr. CRYSLER: Yes, that is correct, sir.

Hon. Mr. HAYDEN: You think the winding up provisions should remain as they are?

Mr. CRYSLER: Quite, sir. We have the same view as to the Winding Up Act as to the Companies' Creditors Arrangement Act, namely, that they should remain as they are. The last four lines of section 9 (3) reads as follows:—

> and in the case of a corporation also a list of the shareholders showing the number of shares of stock subscribed for by each shareholder and the amount of capital paid up by each such shareholder.

Hon. Mr. HAYDEN: Let us stop there. This whole section deals with assignments. Or do you think it deals with more than that?

Mr. CRYSLER: I think, sir, the application is a little more than winding up, because I would think that this section would continue to have application in the event of providing in the place of the present sections 11 to 24 for composition before bankruptcy in the case of trading firms. I think it would still have a connection there. Our point in regard to section 9 (3) is that it is a very awkward thing for a trustee to supply that information in connection with large estates in the time available. We rather think that in the draftsmanship of the act that feature may have been overlooked. We believe that those four lines should be deleted.

Hon. Mr. CAMPBELL: What particularly do you say is burdensome to the trustee, the supplying of the information to the shareholders?

Mr. CRYSLER: Yes. We have had trustees tell us that with large corporations —take for instance a mine, with thousands of shares widely distributed—the list of shareholders might run into many pages.

Hon. Mr. HAYDEN: And the list might be 50 to 60 per cent inaccurate, because there would be street certificates?

Mr. CRYSLER: Yes. We think that possibly the draftsman overlooked that there is that type of company where this work would run up into a very considerable item of expense. And above all, perhaps no practical purpose would be served in a no-dividend estate.

Hon. Mr. CAMPBELL: Is the proposed amendment not obviously intended to show the amount of capital paid up and any unpaid capital which would form part of the estate?

Mr. CRYSLER: Yes. We believe that the trustee should investigate the matter and acquire all this information in due course of administration. Our only question is as to the advisability of obliging him to go to the trouble and expense of circulating it all.

Section 9 (6) relates back to what I said a moment ago about bulk sales. We hope that that section will be carefully studied and either dropped or at any rate not put into the act in such a form that it would have the effect we fear.

Section 10—Application of summary provisions where a trustee cannot be found to act—is of course approved by us.

At this point, rather than speaking extemporaneously on compositions, extensions and schemes of arrangement, I would like to read a few paragraphs from the brief before you, commencing at the middle of page 3:—

> Sections 11 to 24 deal with compositions, extensions and schemes of arrangement. They involve the introduction of two important features. Provision is made for compositions, etc. without bankruptcy and there appears to be an intention to bring under the Bankruptcy Act all forms of insolvencies, reorganizations, liquidations and winding-up proceedings.

Hon. Mr. HAYDEN: May I interrupt you, Mr. Crysler? We have your general view, that you are opposed to the inclusion in this Act of proceedings relating to matters other than bankruptcy, such as proceedings under the Companies' Creditors Arrangement Act.

Mr. CRYSLER: Yes.

Hon. Mr. HAYDEN: It is up to us to consider sections that deal with that, and your brief indicates them?

Mr. CRYSLER: Yes.

Hon. Mr. HAYDEN: I was wondering why it should be necessary to read the brief, unless you want to wield the sledge-hammer twice. You are opposed generally to the incorporation of the provisions that you have indicated, and it is not going to do us any good to look at the particular sections now.

Mr. CRYSLER: I understand. I might explain that in the following parts of this brief it is not so much the sections we discuss as the principles upon which we base our opinion. I dare say that these principles are not new to any of you gentlemen. I have no particular wish to read the paragraphs, but if you desire me to read them I will do so.

The CHAIRMAN: I do not think these paragraphs need be read now.

Mr. CRYSLER: In that case, Mr. Chairman, I would like to skip over to page 5 of the brief, dealing with the Companies' Creditors Arrangement Act.

Hon. Mr. CAMPBELL: Mr. Chairman, for the sake of continuity I wonder if it would not be well to have included in the evidence of Mr. Crysler that part of his brief which he proposed to read.

Hon. Mr. HAYDEN: The whole brief is being put into the record.

Mr. CRYSLER: I would like to read the three short paragraphs on page 5 concerning the Companies' Creditors Arrangement Act:

> The Companies' Creditors Arrangement Act was passed to enable the reorganization of corporations where classes of securities are involved. It has proved a valuable instrument for realization by investors and it is most important that it be retained for that purpose.
>
> However, the provisions of the Companies' Creditors Arrangement Act were wide enough to permit ordinary trading compositions, extensions and schemes of arrangement under it and, in the years before the war, when insolvencies were more numerous than now, certain defects, principally of a procedural character, did become apparent from the point of view of unsecured creditors in proceedings taken by purely trading debtors under that Act.
>
> It is necessary that the Act be amended to guard against a recurrence of these defects and prevent its use for all practical purposes where trade creditors' interests are primarily involved. It is understood secured creditor interests are preparing suggested amendments to accomplish this purpose.

I wished to read that so that I could say that since the brief was prepared we have had an opportunity of reviewing the amendments prepared by the Dominion Mortgage and Investments Association and presented to this committee, and we are quite satisfied that those amendments carry out the purpose which it was said that they would.

The next group of sections affect the duties of the Superintendent of Bankruptcy. Section 39 (4) (*g*) provides that he shall audit and examine trustees' accounts. Section 91 relates to release of trustee. Section 82, statement of receipts and disbursements; and section 83 (1) (*c*), notice of final dividend. I heard those four sections discussed at considerable length this morning, and I think no good purpose would be served by repeating what has been said. There was some discussion as to the inconvenience involved in having to furnish the Superintendent with all the material required. I had a talk subsequently with one or two gentlemen who carry on the business of trustees, and I understand that, broadly speaking, the practice is for the trustees to supply the Superintendent with statements of their receipts and disbursements; and, if he requests it, they supply him with further detailed information in the form of vouchers. However, it is said that when the trustee takes his statement of receipts and disbursements to the court, the practice, at least in Toronto, is to take the actual vouchers there for the inspection of the court, and what ordinarily happens is something in the nature of a spot check by the court. Hence the statement that cratefuls of documents would have to be shipped if all those original vouchers were required by the Superintendent in order to make a spot or full check as the court now does.

Hon. Mr. HAYDEN: Generally speaking, wherever there is any decision to be made on the accounts or fees of the trustee, you think the reference in the first instance should be to the court?

Mr. CRYSLER: We do, sir. That brings me to the next point that I wish to make In the courts you have the protection of forms of judicial procedure which have been built up over the ages to secure the best justice known to man. I would not for the world suggest that an administrative official would give anything but the best possible justice, but my point is that he does not follow

through the procedure of the court. There is an inherent difference between court procedure and administrative procedure. For that reason we believe that the passing of accounts, the release of trustees, and so on, should remain under the jurisdiction of the courts. I am told that especially in large estates there is almost invariably considerable oral argument to support the statements, and that if there was no opportunity to make oral argument there would almost inevitably be a somewhat protracted exchange of correspondence in its place.

Hon. Mr. HAYDEN: Do you not think the stronger ground is the one you stated first?

Mr. CRYSLER: From the point of view of immediate purposes, yes sir. One does not want to get too far afield in large questions, but we all know the tendency towards administrative procedure rather than court procedure; and I think those of us who are trained in the law and have a knowledge of the history of administration in courts and so forth, are rather of the view that the further that tendency develops the further you tend to get from abstract justice. I am not so sure that in the long run the second point may not be as strong as the first one, sir, though of course it is not as immediate.

In regard to the Superintendent there are certain other reeferences in sections 78 (3) and 78 (4). We believe that these should be deleted. The inspectors are the governing body of the estate; and our thought is that they should do the job and that it is probably not the most suitable function for the Superintendent to intervene in. After all, he is in Ottawa and is likely to be less closely in touch with some aspects of the situation than those officials who are on the spot.

Hon. Mr. CAMPBELL: I do not know why that amendment is suggested, but might it not be because the larger creditors are represented by the inspectors and that many small creditors feel that, although money is available for distribution by way of dividends, they are unable to get the inspector or trustee to make a distribution at a particular time? If this amendment were carried the smaller creditors could communicate with the Superintendent and ask him to intervene and see that a distribution was made. After examining the affairs of the estate he might come to the conclusion that the inspectors represening the larger creditors were improperly withholding the distribution for some purpose.

Mr. CRYSLER: I can see that possibility.

Hon. Mr. CAMPBELL: How would the amendment interfere with the act at all? It seems to me that the Superintendent would not override the decision of the inspector or trustee except in an extreme case.

Hon. Mr. HAYDEN: The court could do that just as well as the Superintendent, could it not?

Mr. CRYSLER: Would you please refer to subsection 208 (*d*) of the act? This says:

> Section 208 (*d*). Any person who, having been appointed a trustee, without reasonable excuse, fails to observe or to comply with any of the provisions of this act, or fails duly to do, observe or perform any act or duty which he may be ordered to do, observe or perform by the court or the superintendent—

We question the wisdom of that provision insofar as the superintendent is concerned. The court order is issued as a result of judicial process, and if the trustee does not happen to agree with that order he has his remedies in appeals through judicial process. There is not the same protection either at the beginning or the ending of an administrative order issued by an administrative official. We doubt whether that is quite a fair position in which to leave the trustee in bankruptcy. As you will recall the discussion this morning, at the time we prepared our statement we were unable—as Mr. Bullen was unable—to find any

right of appeal from the superintendent's decision provided in the bill. Of course we heard Mr. Reilley say this morning if that was the case he would be very happy to have it changed. In any event, sir, I am not inclined, and I do not think my members are inclined, to raise a very important issue concerning the superintendent's right to intervene to the extent of interim dividends. We mention it, but we do not regard it as a very important point among the amendments.

Carrying on with a group of kindred sections dealing generally with the trustee, I would just refer again to the fact that as the act stands now there is this section 208 (*d*). There is apparently a suggestion that the trustee should take his receipts and disbursements to the superintendent and get his discharge from the superintendent. As I have said, we were unable to find a right of appeal, and we do not think that would be a fair situation in which to leave the trustee. Our preference would be for these matters to be left with the courts, where they are now. But we do believe the trustee should have the right of appeal if matters are to be left to the superintendent.

I come now to a few minor matters in connection with the trustee. If you would please refer to section 39, subsection 7 which reads:—

> The superintendent may give such instructions to trustees regarding the estates under their administration as may be deemed necessary or expedient.

We do not know exactly the purpose of that. It is perhaps a little broad. There may be some specific purpose that the superintendent has in mind, and perhaps it should be clarified. For instance, relating to what I have just said, supposing that the trustee should get instructions to pay an interim dividend before he has settled the income tax for which the estate is liable. It may be an extreme instance of what might happen, but you could see the difficult position in which the trustee might be placed. We suggest he should not be left open to such a difficult position.

Section 40, subsection 3 reads:—

> No trustee shall be bound to assume the duties of trustee in matters relating to assignments or receiving orders or to compositions, but having accepted an appointment as such he shall until released or another trustee is appointed in his stead perform the duties required of a trustee under this act.

You will notice that that falls under the general heading of administrative officials. It follows the assignment and we think there should be some more or less definite time limit pause there to give the trustee an opportunity to at least make a superficial examination of the estate to determine whether he wants to take it on. You will notice on page six of our brief we suggest that the trustee should not be bound to act until following his acceptance he has been confirmed at the first meeting of creditors, the point being that that will give him an opportunity to investigate.

Section 44, subsection 1. We are inclined to believe that this is somewhat impracticable in so far as theft insurance is concerned. Trustees tell us that sometimes they cannot buy such insurance for certain types of assets. Sometimes they get heavy equipment, which could not be possibly stolen, and they consider it a waste of money to insure it.

Hon. Mr. HAYDEN: You favour—

Mr. CRYSLER: Leaving that out.

Hon. Mr. HAYDEN: Supposing the inspector wants it?

Mr. CRYSLER: Then let each estate be dealt with according to its merits, and whether or not the insurance can be obtained.

Section 44, subsection 3—moneys to be deposited in the bank. The last two lines of this subsection read:—

> All payments made by a trustee shall be made by cheque drawn on the estate account.

I should like to draw attention to the fact that cheques are not legal tender. You might possibly get into difficulties there. Then again, trustees have told us that quite often they get in positions where they go out to small towns and have to hire from three to six or eight persons for a day to take stock, and so on, and it is more convenient to pay them out of hand with cash. Trustees feel they would be seriously inconvenienced if they could only draw cheques on the estate account.

Now section 44 (5). This is the books and records section, and it was discussed so fully this morning that I shall not take you over the ground again, but I think I can clarify something about it. The difficulty of the present section is that it seems to read as though requiring separate accounts in the book of records. Here is why we do not like that. Very often in the early days of the bankrupt estate the trustee has to advance his own money and obviously he must show where the money is.

The CHAIRMAN: That would apply to the previous section.

Mr. CRYSLER: Yes. By allowing the trustee, as at present, in most cases to keep track of estate moneys in a separate ledger account in his own general books you avoid a multiplicity of books to keep up. One trustee in Toronto told me he had some hundreds of estates, and if he had to keep his accounts separate in the record books he would have to have some hundreds of sets of books. This trustee balances his books monthly, and he said to me, "My goodness! I don't want to have to balance all those sets of books monthly. At present I balance my own books. There is a separate sheet for each estate, the job is done, and I know I am all right." I mention that as it may clarify some of the discussion of this morning. Another trustee pointed out that occasionally he had to deal with what is termed a multiple estate. This was instanced this morning by Mr. Bullen in reference to the Canadian Department Stores. You cannot possibly have your books of account in the trustee's office if the estate continues in operation, for they must be out in the branches. All the trustee can have are the controlling accounts. We mention those things in the hope that they will be taken into consideration.

The CHAIRMAN: Would you be in a position to suggest a remedy?

Mr. CRYSLER: The old section, sir. We do not know of any case where it has substantially gone wrong. If it has gone wrong in some particulars, perhaps those particulars can be corrected without the whole body of the section being changed.

Dealing with the next two or three subsections, 6, 7 and 8, in certain circumstances the records will go to the superintendent. We question the advisability of that for this reason. Trustees say that for a year or two after the estate is closed they are forever getting inquiries, and they need the records in order to answer those inquiries. Then there is the other angle. I think one must be fair with the trustees. If they pass away their records, and somebody should charge wrong practice in some respect, where are the trustees when their records are gone? I suppose the answer is they could be returned, but after all I think most people in the matter of protection prefer to keep their means of protection in their own hands. I do not know why trustees should not be permitted to do that.

Section 53 (1). This has to do with persons claiming property in possession of the bankrupt. The subsection provides that a trustee may waive the filing

proof of claim. We question the advisability of this for two reasons: One. It may lead to loose practice. Two. It does not leave a permanent record of the disposition of the claim, as to why it was so disposed. We think the proof should be filed.

Section 53 (2)—Disposal of Filed Claims. There, as you will notice, the trustee is allowed a certain time within which to admit or dispute claims. We think the fifteen-day period should be increased to thirty days. The trustee should normally have thirty days to complete his investigation. Then as regards the claimant, there seems to be practically a statutory adjudication of his claim, and by reason of distance he might almost lose his claim if he did not put it in within fifteen days. We think this period also should be lengthened to thirty days.

Section 53 (5)—Trustee not liable for costs or damages. This subsection was discussed this morning. We believe the court should have power to award costs where a creditor is rather obviously unnecessarily put to the expense of establishing his claim.

Section 63 (1). Another question arises in this subsection which deals with proceedings by creditors when the trustee refuses to act. When we first looked at that subsection we were prepared to regard it favourably; on second thought we consider it of doubtful value. First of all, there would have to be a legal transfer of title from trustee to the creditor, and we rather doubt whether if that was done there is sufficient protection for the other creditors interested receiving their full share. For those reasons we doubt the advisability of that subsection.

I come now to assignments and preferences. Section 69 (2) deals with protected transactions. There is a feature we do not like. It seems to place a permanent onus of proof on the person supporting the validity of the transaction. If that were limited to the three months' period for the avoidance of transactions where preferences have occured, I do not know that one would quarrel with it very much; but it does seem to us rather unreasonable that the person supporting the validity should bear the onus of proof, whereas under normal legal process the onus is the other way around. For that reason we would much prefer the former section 65. We think it should be retained rather than the new section should be adopted.

The matter of dividends is covered by sections 87 and 88 (2). Whether it is contemplated that these sections would remain if sections 11 to 24 go, I do not know. At any rate we should like to comment that once creditors are paid in full the function of bankruptcy is complete. Then the assets of the corporation should be given back to the corporation, as there is no provision for distribution to shareholders. Following that the corporation would then have the usual processes under the Companies Act or the Winding Up Act for reducing its capital and carrying on, or having itself wound up and assets distributed. At any rate we question whether bankruptcy should deal with these matters, once the creditors have been paid in full. They should, we think, go to other remedies.

Hon. Mr. CAMPBELL: What practice is followed now with respect to that sort of thing, assuming there is a petition in bankruptcy and that the trustee finally sells the assets and makes a distribution to the creditors and has on hand say $100,000?

Mr. CRYSLER: Well sir, I asked one trustee what light he could throw on that practice, and, although he is a man well up in years now, he said that there was only once in his life where he met that situation.

Hon. Mr. CAMPBELL: Do you mean where he had a surplus?

Mr. CRYSLER: Where he attempted to handle a surplus. He did not say that there were no cases where he had surplus to hand back to the corporation, but

only in one instance did he have a surplus and attempted to distribute it to the shareholders. Then in the distribution to the shareholders he did not attempt to proceed under the Bankruptcy Act; he worked entirely apart from it. He did not say under what he did work, but one would obviously think it would be to get consent from the shareholders.

Hon. Mr. CAMPBELL: I wonder if Mr. Reilley could answer that question in a practical way? What happens, Mr. Reilley, in a case of that kind?

Mr. REILLEY: I really do not know myself. In 99 cases out of 100, in fact in all the cases that do arise, you get to the point where the assets are being sold and there may be something left—some small asset or money—you have not got any corporation or anybody to which you can hand back the money.

Hon. Mr. HAYDEN: The corporation is still there?

Mr. REILLEY: It may not have cancelled its charter with the Secretary of State, but you will not find in any of those cases that there are officials to carry on the functions of the corporation, and you find that the money is there at loose ends; there is no one to receive it. It is turned in to me as an undistributed asset, and we have a good deal of it lying in the Receiver General's office today, because there is no company to claim it or do anything with it. My idea in that instance was not to add on some bankruptcy function, but merely to give the trustees the right to go ahead and give this money to the people who are entitled to it when it is apparent that otherwise they are not going to get it. That is the sum and substance of the whole idea. But I do know that at the present time there is a good deal of money lying in the Receiver General's office belonging to companies that do not function and there is nobody to claim it and divide it among the shareholders.

Mr. CRYSLER: Could I address a question, Mr. Chairman? I have been rather interested in what Mr. Reilley has said. Frankly that aspect had escaped going to ascertain the shareholders entitled to it? I would be inclined, on my my attention: if there is no official way to hand the money over how are you own initiative, to withdraw the point if I could be satisfied that there is a feasible way of carrying out Mr. Reilley's proposition?

Hon. Mr. HAYDEN: You might be able to find a list of shareholders in the company's books; then you could check with them and ask them to produce their certificates to show whether or not they are still shareholders. I can understand that procedure might be possible, and yet you would not be able to find a board of directors that would function.

Mr. CRYSLER: Frankly, we were not thinking of the problem Mr. Reilley has mentioned. We were reviewing this section not at all apart from sections 11 to 24; and that fastened our attention on it, and we did not approve of it as applied to companies where there was a corporation that could be found, and where there were sizeable assets. We did not consider the point that Mr. Reilley has brought up. There may be something to it.

Hon. Mr. CAMPBELL: If a company has not applied for its discharge within sixty days after distribution of the assets the Superintendent could direct them to be distributed amongst the registered shareholders.

Mr. CRYSLER: That would seem to answer the problem.

Mr. REILLEY: May I be permitted to reply on that question. I have never yet known a corporation to apply for its discharge.

Hon. Mr. CAMPBELL: I can see the necessity for having some procedure, because the money properly belongs to the shareholders; all the creditors have been paid and there is no reason why it should be held by the Receiver General.

Mr. REILLEY: Not at all.

Mr. CRYSLER: As far as we are concerned, if there is a reasonable time limit fixed in which the corporation may apply for its money, then I believe we would be satisfied to withdraw our present objection.

In connection with release of the trustees, there are certain results which fall from that provision. Section 92 (1) would result in undisposed of equities in real property automatically vesting in mortgages. Our view is that it goes a little too far; that property sometimes has an increased value, which would be to the benefit of the creditors, and we do not know just why the bankrupt should get it back. Section 92 (2) automatically vests in the bankrupt certain unrealized property. Again we do not know just why he should get it back.

Hon. Mr. HAYDEN: What are you going to do, when the trustee is released?

Mr. CRYSLER: Is there not a section somewhere in the act which provides to the effect that even though the trustee is released, if something later on should arise in that estate, he is still trustee for that purpose?

Hon. Mr. HAYDEN: You mean de facto?

Mr. CRYSLER: Yes, de facto.

Hon. Mr. HAYDEN: I should think that is only to cover matters where a title or clearance is required.

Mr. CRYSLER: We have in our mind the question of real estate, where you have property subject to mortgage an dthere is no market for it, or so little that can be realized that nothing is done with it. Then there comes a land boom, and it does not take much increase to widen that spread.

Hon. Mr. HAYDEN: But surely there should be some end to the period of bankruptcy, in which time the trustee is released and the creditors have taken their bit, whatever it is. The bankrupt should be able to emerge and gather up whatever tatters are left. Now if you are going to hang some kind of tail on to him, that anything that is left is going to be held for all time for the benefit of the creditors in case there may be an appreciation in value, you are going to make bankruptcy proceedings unending.

Mr. CRYSLER: I can see the danger of that. Of course what we have to say here has nothing to do with the bankrupt getting his discharge; that is a separate matter.

Hon. Mr. HAYDEN: It may occur without the releasing of the trustee.

Mr. CRYSLER: Our people felt rather definitely that these assets should exist for the benefit of the creditors if they ever have any value.

Hon. Mr. HAYDEN: You mean for all time?

Mr. CRYSLER: Yes. Although, frankly sir, I do not believe there is much in it from a practical point of view.

Hon. Mr. HAYDEN: I do not think there is much in it and I think you would make bankruptcy proceedings, as far as the Superintendent's function is concerned, unending.

Mr. CRYSLER: I can see that point. I do not think my principals would be inclined to press that matter.

I wish next to deal with two subsections, 92 (3) and 92 (5). We rather definitely feel that those items should be disposed of on the direction of the court, rather than by return to this person or that; the court should definitely instruct what should be done with them.

Next, meetings of creditors, 93 (1). There is a small point of interpretation there that we should like to draw to your attention. The last sentence reads: "Provided that the official receiver may, when deemed expedient, authorize the meeting to be held at the office of any other official receiver." To our mind it is a necessary implication that the official receiver could only hold meetings in his own office in his own locality. Now if there is anything

to that apprehension, we think some clarification should be inserted to make it clear that the official receiver can instruct the holding of meetings otherwise than in his office.

Section 96 (3) has rather a delicate aspect. In cases of a tie vote the chairman has the casting vote, and often at the meeting the chairman will be the official receiver. In effect he would be put in the position of choosing a trustee by his casting vote. There is one way of looking at it, that as a court official he should not take that responsibility; or, perhaps it is not good to put a public official in the position of dividing up business. To avoid this, it is suggested that the following words be added to the subsection: "in the case of a tie vote, on the appointment or removal of a trustee, the chairman should not have a casting vote, and the trustee presently appointed shall continue in office." We think that might get the official receiver out of the occasional awkward position, and at the same time be a sound way of dealing with such matters.

The next section upon which I wish to touch is 100 (1). We think that all proofs of claim should be filed before the meeting. The section says, before the meeting or before voting. If they are not filed before the meeting it does not give a trustee a chance to check them.

Section 105 (3) (*i*) says that any person associated with the bankrupt may not vote. That provision strikes us as being rather broad. We do not know what it means.

Hon. Mr. HAYDEN: Mr. Bullen suggested retaining the old section. Would you be agreeable to that?

Mr. CRYSLER: We would agree to that, sir.

Section 108 (2) should have shareholders struck out, partly to conform with our view that sections 11 to 24 should go, and partly because fundamentally the shareholders should not be voting for a trustee; that is a creditor's function

Section 108 (7) reads:

> A majority of all the inspectors appointed shall constitute a quorum for a meeting which may be called by the trustee or any inspector as and when he deems necessary on three clear days' notice to all of the inspectors unless notice is unanimously waived or the consent to hold such a meeting be given in writing by an absent inspector.

We think it rather inadvisable to put in the hands of an inspector the power to delay meetings three days. When that matter was discussed this morning reference was made to the arbitrary trustee, and the giving to one inspector a chance to call the meeting. We should like to draw to your attention the picture that, there may be a trustee here and inspectors there, and the inspector tries to be a law unto himself. We are told that sometimes exists. To guard against that we think the section should be modified along the lines which I have mentioned.

Hon. Mr. HAYDEN: You think three days is too long a notice?

Mr. CRYSLER: To block the calling of a meeting. Sometimes the purpose of a meeting has passed in three days.

Hon. Mr. HAYDEN: You mean that an inspector will waive notice of a meeting?

Mr. CRYSLER: Yes; he blocks the meeting; he will not waive notice. He can hold it up for three days, and there is some rare dickering in these estates.

Hon. Mr. HAYDEN: If three days is too long perhaps two days would be satisfactory.

Mr. CRYSLER: Any lessening of the time would be helpful.

Hon. Mr. HAYDEN: You think three days is too long a notice?

Mr. CRYSLER: To allow an inspector to block the calling of a meeting. Sometimes the purpose of the meeting is over in three days. Occasionally rare dickering goes on in those estates.

Hon. Mr. HAYDEN: If three days is too long, why not make it two days?

Mr. CRYSLER: Any shortening of the time would help.

Section 108 (14), inspectors' fees. Trustees, especially those who handle large estates, tell us that the remuneration of inspectors is really inadequate for the services that they are expected to perform. So far as Toronto is concerned, we think that the scale of fees should be doubled; and if any further increase is necessary, that should be left to the court.

Section 110 (2) and (7) contemplates doing away with the swearing of proof of claim. That was discussed this morning, and I think it is sufficient for me to say that if these amendments were adopted they would let in a lot of loose practice.

Section 110 (5) was also discussed. We are in favour of the deletion of all the words from "otherwise" to the end of the subsection, but we suggest that the words "and, if so, to what extent" should be substituted therefor. We think that a creditor should not only say whether he is secured or not, but should state that portion of his claim which is secured. Often there are claims which are not wholly secured.

Section 118—No creditor to receive more than 100 cents on the dollar. That was dealt with quite effectively this morning. We think it should be made clear that secured creditors may recover the cost of realizing their security.

Section 121—Postponement of wage claims of relatives. We agree with what was said this morning and think the old section detailing the relatives affected should be retained. At our meeting more than half of the men skilled in this work could not agree on what a third-degree relative was. We fear that the proposed amendment would give rise to a good deal of misunderstanding.

Section 125 (1) requires the trustee to notify all creditors whose claims have been admitted. We cannot see that this is necessary and we think it should be deleted.

Hon. Mr. HAYDEN: There was a suggestion this morning that notification of disallowance should be sent as quickly as possible.

Mr. CRYSLER: That would overcome one aspect of the difficulty, namely, the time and trouble of sending out notices to all creditors whose claims have been admitted. But there is another aspect which was not discussed this morning. In the early's stages of a bankruptcy, before the trustee has had adequate opportunity to investigate, he should not be in the position of having to admit claims or dispute them and force issues. Sometimes, and especially in large estates, it takes a long time for the trustee to satisfy himself as to just what claims are justified.

Hon. Mr. HAYDEN: This subsection simply says "The trustee shall as soon as may reasonably be done examine every proof of claim filed".

Mr. CRYSLER: Oh, I am sorry; I thought there was a time limit on it.

Section 125 (2) and (3) and following subsections are approved by us. These subsections enable the trustee, without taking a stand, to require that doubtful claims be proved.

Section 126 clarifies and revises priority of claims. We like this too.

Section 133, duties of bankrupts. Generally, we approve of this, but there is one point with which we de not agree, and that is the latter part of paragraph (*e*):—

> Where the affairs of the bankrupt are so involved or complicated that he cannot himself reasonably prepare a proper statement of his affairs, the Official Receiver may, as an expense of the administration not

to exceed twenty-five dollars, authorize the employment of some qualified person to assist in the preparation of the statement.

We doubt whether $25 is at all an adequate figure, and we question whether any figure should be mentioned.

Hon. Mr. HAYDEN: Perhaps "a reasonable amount" would be better.

Mr. CRYSLER: Yes. The cost might run into hundreds of dollars, or even conceivably into thousands of dollars.

Hon. Mr. CAMPBELL: As in the Abitibi case, for instance.

Mr. CRYSLER: Section 137 (4)—Examination of bankrupt at meeting. The provision for the evidence of the bankrupt being taken down in shorthand is impractical. Many trustees would not be able to find a competent stenographer just when required. We doubt whether that subsection should be retained.

Section 143—Questions must be answered. That section in its present form appears to us to be rather unfair to the bankrupt.

Hon. Mr. HAYDEN: I was waiting for your comment on that.

Mr. CRYSLER: May I read the comment on this in our brief?:—

> The provision in section 143 that evidence taken on examinations may be given in evidence in subsequent proceedings should be limited to evidence given at the formal examination mentioned in sections 138, 139 and 142 (but not including examinations before the Official Receiver), of the Bill. It would be unfair to give in evidence, evidence taken at an informal examination.

We are told that often the best ends are achieved by a very informal examination, which actually is just a chat in the Official Receiver's office. We do not think it would be fair to report that and give it in evidence against a person. If that practice were followed a few times, it would probably result in bankrupts becoming very reticent in those little chats.

Hon. Mr. HAYDEN: It is a very dangerous principle to compel a person to answer questions and afterwards prefer a charge against him and read his answers in an effort to convict him.

Mr. CRYSLER: We agree, Senator. As stated in the brief, we would go so far as to support that if it were confined strictly to the evidence given at the formal examination mentioned in sections 138, 139 and 142, but not including examinations before the Official Receiver. The reason for that is that while we thoroughly subscribe to the principle you have mentioned, we also fully appreciate the kind of persons that trustees in bankruptcy often have to deal with, and the difficulty of getting any information out of them—indeed, in many cases it is almost impossible to get any information.

Hon. Mr. HAYDEN: This section is not on the point of getting information.

Mr. CRYSLER: I see your point, sir. That is right.

The CHAIRMAN: It has to do with the further use of the answers.

Hon. Mr. HAYDEN: Yes.

Mr. CRYSLER: Quite frankly, sir, we would not go so far as to support that section, but we presume that the draftsman had some cogent reasons for putting it in and we would withdraw our opposition if the section were confined to the formal examination.

Hon. Mr. HAYDEN: It is not entirely new.

Mr. REILLEY: It is almost exactly as in the present act.

Hon. Mr. HAYDEN: That does not make it any better. I do not like it, but I am only one.

Mr. REILLEY: I have my doubts about it myself.

Hon. Mr. HAYDEN: To me, it is inherently wrong.

Mr. CRYSLER: Whatever my personal feeling about it may be, I am in the position of having a written instruction and perhaps I had better not say more than I have said.

The sections dealing with the discharge of the bankrupt were discussed at some length this morning. I think perhaps I need not go over a great deal of detail in connection with these. We are aware of certain reasons why it would be desirable to have what might be termed an automatic discharge principle in operation, but on the whole we think the present system should be retained. Generally speaking, I would suggest that the state should not be called upon to look after, shall we say, the foolishness of human beings who by doing certain simple things, could protect their own interests. I believe that the expense of applying for discharge should be left to the bankrupt. Even though the cost of obtaining the discharge is small, it is questionable whether that is an appropriate item to include in the expenses of the estate.

Section 146 (4) requires the trustee to give notice of the application for discharge to every creditor of whom he has knowledge, whether or not his debt has been proven. We cannot see why notices should be sent to people who have not proven their debts. Surely until they prove their debts they have no interest.

Section 146 (5)—Procedure when trustee not available. The proposal is good enough, but we wonder just how the necessary records and information will be available in most cases if the trustee is not available.

The CHAIRMAN: If the records were filed with the Superintendent they would be available. A previous section provided for filing of the records with the Superintendent.

Mr. CRYSLER: Yes, sir, but you will perhaps recall that my principals did not like that section. If our view were to prevail, the two amendments would be dropped.

Section 147 (9)—Evidence at a hearing. Section 147 (11)—Right of bankrupt to oppose statements in report. We think that these subsections are impractical. The bankrupt is not given any right to dispute the Superintendent's report, and even if he were it would not be feasible for the Superintendent to appear for evidence and examination whenever there was a dispute.

Section 159 (1) (*a*)—Courts vested with jurisdiction. This states that the jurisdiction of the bankruptcy court is "to hear and determine all matters in dispute arising out of the administration of an estate or in which any interest of the estate is involved or to which the trustee is a party, or in which the trustee is a claimant against any other person."

Hon. Mr. HAYDEN: When Mr. Justice Urquhart was here he criticized this extension of the jurisdiction of the Bankruptcy Court, and suggested that matters which were not bankruptcy matters should be determined in other courts.

Mr. CRYSLER: That is our point. We suggest a revision of this subsection so as to limit the Bankruptcy Court to what are properly bankruptcy matters. Other matters should go to other courts where they are handled now.

There was some discussion this morning on the question of judicial districts. I have not much that is new to say, but I should like your permission to read this paragraph near the bottom of page 11 of the brief:—

> So far as Ontario is concerned, section 160 would split up the Bankruptcy Court, now centralized at Toronto into 47 Bankruptcy Courts in the Registry Offices of the Supreme Court of Ontario. This is most undesirable as it would result in dispersion of bankruptcy records and lack of uniformity of practice. It is also undesirable that the local Registrars of the Supreme Court, all of whom are inexperienced in

bankruptcy matters, should be vested with the Registrar's judicial power as local Registrars. Further, action on petitions in outside districts would be delayed until the arrival of Judges on circuits.

I would ask you to bear in mind the importance of that consideration and just what would happen in the case of an estate where there was that delay. The creditors could not do anything until they reached Toronto or until the Circuit Court judge arrived. Where a petition was pending there might be rare doings in a considerable number of estates before the judge arrived on circuit or arrangements were made for an application in the Supreme Court at Toronto.

Hon. Mr. CAMPBELL: That would not necessarily be the case. A petition could be filed in a town like Chatham and the hearing could take place in London or wherever there happened to be a weekly court, or in Toronto.

Mr. CRYSLER: That is right, but remember this much, especially in the worst type of bankruptcy—shall we say where the debtors are real swindlers upon their very face, if you file your petition in Chatham one day and the bankrupt gets knowledge of that, and you have to wait until only next day to act in Toronto, much may happen over night.

Hon. Mr. CAMPBELL: It would not be compulsory for the petitioner to file his petition in the county town. He could use the same practice that prevails now and file in Toronto, and so get over that.

Mr. CRYSLER: I am not familiar enough with court practice to be sure of that point. Could anybody here help us? I am just doubtful.

Hon. Mr. CAMPBELL: Here concurrent jurisdiction is intended, and the lodging of the petition could take place anywhere.

Mr. CRYSLER: Then what is wrong with the present situation where, along with the advantages we have in centralization, while the bankruptcy court is located in Toronto, by leave the parties can try the issues elsewhere; and they do where it is more convenient. The mere fact of the centralization of the Bankruptcy Court in Toronto does not by any means result in all legal proceedings being taken in Toronto; they are regularly taken elsewhere when it is more convenient to the parties.

Hon. Mr. CAMPBELL: I wonder where the real objection lies. The practice works very well in Quebec, I understand, where they have decentralization.

Mr. CRYSLER: I do not know, sir. I have heard, in an unorganized way, of complaints in British Columbia, where apparently some persons want centralization. My knowledge there is very very sketchy, but I do know there are at least some individuals who would like to see a Judge in Bankruptcy designated. Against that, from what the Superintendent in Bankruptcy said this morning, there does not seem to us to be any general objection in those provinces.

Hon. Mr. CAMPBELL: The specific point made is that you feel decentralization would bring about a conflict of decisions or some variation in practice?

Mr. CRYSLER: In the immediate future there would be a certain lack of uniformity of practice and probably you would never get quite such efficient practice as at the present time in the Bankruptcy Court in Toronto, where the officials, not necessarily because they are more competent than in outside points, but because they spend their whole time on the subject and specialize in bankruptcy work, become something of experts. We do not see that material advantages would be gained from decentralization, because, as I mentioned a moment ago, by leave issues can be and are tried outside of Toronto. There are seventeen official receivers throughout the province who have broad powers. Trustees operate all over the province, also with considerable powers of administration. To the best of our knowledge it is not very often that the outside points refer

anything to Toronto. They will of course have their own local solicitors present, but short of that I am told the references to Toronto courts are not at all numerous.

Mr. REILLEY: Nothing can be done outside of Toronto because the officials simply call the first meeting of creditors and report to the court elsewhere. There is no local authority. Everything goes to Toronto. Even if you want to make the simplest application it has to be made in Toronto.

Mr. CRYSLER: Well, it certainly takes courage on my part to contradict the superintendent, and I have no intention of doing so, because I realize he has much more knowledge of this than I have. Nevertheless, our trustees who have participated in this study, and they are very reputable men, have taken the position as stated in the brief. I suppose I am bound by that instruction and must just leave it rest there.

Section 189 (2). This refers to the evidential value of certain original documents in bankruptcy. It reads:

> The production of an original document relating to any bankruptcy proceeding, or a copy certified by the person making it as a true copy thereof, or by a successor in office of such person as a true copy of a document found among the records in his control or possession, shall be conclusive evidence for any purpose whatever of the contents of such documents, unless the contrary is proven.

Usually the evidential value given to documents under such circumstances is that those documents shall be prima facie evidence. We suggest that is probably as far as this subsection should go. If the document is conclusive evidence, no matter how wrong it may be, it seems to preclude showing it.

Summary administration is covered by sections 196 to 199. We think they are a very good addition to the act. However, there is one point on which we are wondering. I refer to estates with no assets. These estates are sometimes numerous, especially in large centres. We do not see any provision for doing the work of winding them up, brief as the work may be. Our suggestion, as you will see from my brief, is this: As official receivers have not a staff to administer these estates, it is recommended that they be authorized to appoint trustees to administer them, and that trustees be paid at the public expense.

There may be some other way of meeting the financial cost of complying with this summary administration. That is merely our suggestion.

Fraudulent bankruptcy offences—section 200 (1) (*s*). It is true that this section is kept under the control of the court before charges can be laid, but there is a feature of it which we think should be adjusted. It says:—

> If he has within two years prior to his bankruptcy materially contributed to or increased the extent of his insolvency by improvident and riotous living, by gambling or by rash or hazardous speculation not connected with his trade or business—

You will notice the wording there, "materially contributed to or increased." This is not based on the riotous living and so on being the cause of the bankruptcy. There has been some talk of this situation. A man goes to the horse races or he buys stocks—something which many men do. Some time thereafter he becomes insolvent for other reasons. Then, strictly applying this subsection, the fact that his losses at the races or on the stock market aggravated the situation, there is the possibility that some court might allow him to be prosecuted. We think we know what is in the mind of the draftsman there, and we suggest that the subsection should be revised accordingly.

The CHAIRMAN: They are permitted to play, but they are not permitted to lose.

Mr. CRYSLER: Of course, obviously the draftsman of the subsection had in mind the man who runs completely amuck, as the result of which he goes bankrupt. Let us say it more directly that way.

Hon. Mr. CAMPBELL: It is copied from the former section.

Mr. CRYSLER: Criminal Proceedings—section 206 (4). We think it is a good thing to bring the Crown Attorney into the picture. Usually a bankruptcy offence is within the Criminal Code, and, as I have said, we think it is a good move to bring the Crown Attorney more into the picture.

Now, gentlemen, I will read to you two short paragraphs from the brief and then I shall be through.

CONCLUSION

The present act has been found satisfactory in most respects but some amendments are necessary as suggested in this memorandum.

I should like to emphasize that we have not come down here to find fault with the present act or its administration. We are very well satisfied with that.

> The sections of the present act have been construed by the courts over a long period of years, and the law and the practice have become fairly well settled. If the wording of the sections of the act is changed unnecessarily, it would mean the discarding of all the established jurisprudence and case law, and would open the door to fresh litigation.
>
> Many of the sections of Bill A-5 envisage increases in the powers of the Superintendent and greater centralization in the Superintendent's department. If these sections are enacted the department will become larger and more costly. This will be reflected in levies on estates. The debtor and ordinary creditor classes are the groups principally interested in bankruptcy and so far as is known no organizations of them have asked for any such development. Until conditions are in existence leading them to do so, it is submitted there should not be any broad movement toward increasing the Superintendent's powers and centralization of bankruptcy work in his department.

Mr. CHAIRMAN: I wish to thank you very much for the opportunity of appearing before you and presenting our brief.

The CHAIRMAN: We must thank you ourselves. We have undertaken rather a big job and are glad to have your assistance.

The committee adjourned until to-morrow morning at 11 o'clock.

APPENDIX

BRIEF FILED BY THE BOARD OF TRADE OF THE CITY OF TORONTO

The Honourable Elie Beauregard, K.C., Chairman,
and Members of the Senate Standing Committee
on Banking and Commerce,
Ottawa, Canada.

Honourable Sirs:—

Senate Bill A-5

An Act Respecting Bankruptcy

The Board of Trade of the City of Toronto is primarily a trade association incorporated by Special Act of the Parliament of Canada originally dated February 10, 1845. Its present membership comprises over four thousand business and professional men engaged in all branches of commerce, industry and finance, and in various professions, many of whom operate nationally and internationally. A substantial number of these members are accordingly interested in legislation respecting Bankruptcy. The Board, therefore, appreciates the opportunity afforded by the Senate Standing Committee on Banking and Commerce of placing before the Committee, on behalf of its interested members, its considered views with regard to Senate Bill A-5 respecting Bankruptcy.

Bill A-5 has been studied in detail by a Committee comprised of representatives of both local and national organizations of unsecured creditors and secured creditors and, in addition, well known licensed trustees. The conclusions of this Committee were subsequently approved by the Council which is the governing body of the Board.

While this Board speaks only for itself, it is desired to advise the Senate Committee that its recommendations are the reconciled and considered opinions of responsible members of the three main groups interested in bankruptcy and competent to speak on this subject matter by virtue of their knowledge and experience.

The Board respectfully submits for your consideration the following comments and recommendations respecting the various clauses of Bill A-5, named:—

Interpretation

Special Resolution—Section 2 (gg)

The basis of voting approval on a special resolution in Section 2 (*gg*) should be as recommended below under Section 15.

Transaction—Section 2 (jj)

A definition of the word "transaction" has been introduced in Section 2 (*jj*) to eliminate unnecessary verbiage and repetition of words. While it has this advantage, it also has the disadvantage of losing a large body of settled law in the Court's interpretations of the meaning of the words which no longer will be used. It is to be expected that for a period of time there will be uncertainties under the new definition until doubtful points are again settled by the Courts. Accordingly, the wording of the proposed clause should receive the most careful legal scrutiny with a view to reducing possible doubtful points to the minimum.

Acts of Bankruptcy

Other Conveyance or Transfer—Section 3 (d)

Section 3 (d) is changed and makes the following an act of bankruptcy:—

> If in Canada or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would have the effect of defrauding, delaying or defeating his creditors or any of them.

This subsection in its present form seems so broad that it would cast a cloud over legitimate transactions. It should receive careful legal scrutiny and not be enacted in a form which would have such effect.

Bulk Sale—Section 3 (i)

Section 3 (i) is new and makes the following an act of bankruptcy:—

> If he makes any bulk sale of his goods *under* the provisions of any Bulk Sales Act applicable to such goods in force in the province within which he carries on business or within which such goods are at the time of such bulk sale wherein the sale price will not be sufficient to pay his creditors in full.

Sales of departments by solvent firms are not taken into account. Also the subsection would prevent the present frequent practice of creditors effecting a quick and inexpensive liquidation through a bulk sale. The Bankruptcy Act should be left as at present wherein bulk sales only become an act of bankruptcy when they are carried out "without complying with" a provincial Bulk Sales Act.

Ceasing to Meet Liabilities—Section 3 (L)

Section 3 (L) is changed and makes the following an act of bankruptcy:—

> If he ceases to meet his liabilities generally as they become due *or fails to pay any particular debt or debts after repeated demands for payment.*

The italicized words are new fail to recognize disputed claims or set-offs. Their effect is to found an act of bankruptcy on an unproven claim. They should be deleted. Failure to pay a particular debt should not be made an act of bankruptcy.

Petition and Receiving Order

Petition by Shareholder—Section 4 (3)

Section 4 (3), which enables a shareholder of a corporation to file a petition against the corporation, should be deleted. Sub-paragraphs (*b*) to (*f*) refer to grounds other than insolvency, and the constitutional power of the Dominion Parliament to legislate concerning petitions on these grounds is questioned respecting solvent corporations incorporated under provincial laws. While sub-paragraph (*a*) is based on insolvency or an act of bankruptcy, such a clause would expose corporations to serious embarrassment at the hands of one or more disgruntled shareholders. Whether or not a shareholder succeeded on a petition, the mere charge of insolvency and publicity therefrom would gravely impair the credit of a corporation.

Appointment of Trustee—Section 4 (11)

The effect of Section 4 (11) is to eliminate the custodian. This change is approved as it will avoid delay, save expense and encourage the trustee to proceed with administration as soon as possible. Reference to shareholders should be deleted from this subsection and also Section 4 (15).

Administration of Estates of Deceased Persons—Section 5

Section 5 which provides for filing petitions against the estates of deceased persons is approved in principle. Some revision in wording, however, is required to make it clear that the section refers to only estates, having insufficient assets to satisfy creditor claims.

Interim Receivers

Powers of Interim Receiver—Section 7 (2)

The clarification of the powers of the Interim Receiver contained in Section 7 (2) is approved.

Assignments

Assignments by Corporations Other than for Debts—Section 9 (2)

Sub-paragraphs (*b*) to (*e*) of Section 9 (2) deal with grounds other than insolvency or bankruptcy. The power of the Dominion Parliament to legislate respecting assignments on these grounds is questioned in the case of solvent corporations incorporated under Provincial Laws.

Sworn Statement—Section 9 (3)

Section 9 (3) requires that the assignment shall be accompanied by, among other things, "in the case of a corporation also a list of the shareholders showing the number of shares of stock subscribed for by each shareholder and the amount of capital paid up by each such shareholder". It is impractical to require the information mentioned in the time available at this stage, particularly in the case of large corporations. Often this information is not readily available and/or it is voluminous and requires a considerable time for preparation. Lines 30-33 should be repealed.

Effect Thereof, Appointment of Trustee—Section 9 (5)

In conformity with the recommendation under Section 4 (3) the reference to shareholders should be deleted.

Application of Summary Provisions of Act to Assignments—Section (10)

The application, under Section 10, of the summary provisions of the Act to assignments, when a licensed trustee willing to act cannot be found, was approved.

Composition, Extension or Scheme of Arrangement

New Features

Sections 11 to 24 deal with Compositions, Extensions and Schemes of Arrangement. They involve the introduction of two important features. Provision is made for Compositions, etc., without bankruptcy and there appears to be an intention to bring under the Bankruptcy Act all forms of insolvencies, reorganizations, liquidations and winding-up proceedings.

Section 19 (6) makes compositions otherwise than under the Bankruptcy Act voidable. The effect of this subsection would be to create such a doubt concerning sales and informal settlements, under which small trading estates are often settled inexpensively and expeditiously, that they would in all likelihood be prevented. There would be the same effect on proceedings under such legislation as The Companies' Creditors Arrangement Act. The Farmers' Creditors Arrangement Act, the various provincial Bulk Sales Acts and Companies' Acts and the Winding-Up Act.

Omnibus Feature Unworkable

The apparent proposal to bring all insolvencies, reorganizations, liquidations and winding-up proceedings under the Bankruptcy Act does not take account of the fact that each of the Acts mentioned is a highly specialized instrument carefully and specifically devised to serve entirely different purposes. They simply cannot be lumped together in one omnibus scheme and remain effective in accomplishing their objects.

For instance as regards the Companies' Creditors Arrangement Act, Section 23 would enable the Court to impose a composition, etc., on a class of creditors where the proposal would not carry the votes of a majority of the class. If such a provision were enacted, it would have a detrimental effect on the sale of securities and might well raise the question of whether Canadian securities could be marketed in the United States where even majority clauses are not permitted in trustee deeds. Section 23 violates the fundamental principle of the Companies' Creditors Arrangement Act, namely, that holders of securities shall enjoy the protection of normal laws and not be coerced into accepting as a class a settlement to which the majority of the class does not assent.

Again, in connection with the Companies' Creditors Arrangement Act, Section 104 of Bill A-5 would require, for the purpose of voting, secured creditors to surrender and value their securities and be entitled to vote only in respect of the balance (if any) due after deducting the value of the securities. Obviously, this would create an impossible situation from the point of view of a security holder. Reference is also made to Section 98 which separates classes of creditors for voting purposes and provides for intervention by the Court.

So far as winding-up proceedings are concerned, the proposed clauses fail to take into account decisions of the Privy Council to the effect that the Dominion Parliament has not constitutional power to legislate respecting the winding-up of solvent companies incorporated otherwise than under Dominion legislation.

Further examples of the unworkability of the omnibus scheme could be cited but possibly those mentioned above will suffice.

Proper Scope of Bankruptcy Act

Each of the Acts mentioned should be left as a separate instrument to accomplish its particular purpose. The Bankruptcy Act is an efficient instrument for enabling traders to realize claims on trade debtors. It should be left to serve that purpose and no effort be made to include under it other fields.

Compositions, etc., Without Bankruptcy

However, there would be a decided advantage in expanding the present composition sections of the Bankruptcy Act, which only operate after bankruptcy, to enable compositions before bankruptcy within the Act's proper field as indicated. Often trade estates suffer loss in goodwill on becoming bankrupt and lose valuable contracts cancellable on bankruptcy because compositions cannot be carried out without bankruptcy under the Act. Provision for compositions without bankruptcy were formerly in the Act and were repealed because of abuses which grew up. This was before the office of Superintendent of Bankruptcy was established and trustees were licensed. It is considered that the administration of the Superintendent and the control over trustees will prevent a recurrence of the former abuses.

All of sections 11 to 24, not necessary for compositions without bankruptcy within the scope described above, should be eliminated. As to certain sections which may remain, the following observations are submitted:—

Comments on Sections Which May Remain—Proceedings by Debtor, Documents to be Filed—Section 11(2)(d)

Section 11(2)(*d*) requires at the commencement of proceedings the filing of a verified, correct statement showing the financial position of the debtor at the date of the proposal. Such a requirement is impractical at this stage, especially in the case of large corporations and often time would not be available for compliance. It is proposed that the subsection provide for a "statement showing as closely as is reasonably possible the financial position of the debtor at the date of the proposal".

Proposals Not to be Withdrawn—Section 11 (3)

The subsection provides for only two days' notice of variations in proposals to sureties. This time is inadequate and should be at least seven days.

Documents to be Sent to Shareholders, Bondholders, etc.—Section 12 (2)

Under Section 12 (2) the trustee is required to send, on request, to each shareholder, bondholder and debenture holder a list of share, bond and debenture holders showing in the case of shareholders the number of shares of stock subscribed for by each shareholder with the unpaid balance, if any, due therein, and in the case of bond or debenture holders the serial number of the bonds or debentures held by each of them with the amount of principal and interest to be shown separately due thereon.

This proposal is too drastic. It will involve trustees in much unnecessary work and estates in heavy costs for the preparation and mailing of this material, particularly in the case of large corporations where it would be voluminous. Moreover, it would not be possible to comply effectively in the case of holders of bearer bonds and share warrants. It would be sufficient to publish notice of a time and place where these records can be inspected.

When Proposal Deemed to be Accepted—Section 15

The wording of Section 15 should be clarified to place the basis of acceptance of proposals on a majority in number of all the creditors holding proven claims of $25.00 and over present in person or by proxy and voting and 75 per cent in amount of those present in person or by proxy and voting.

Creditors May Provide for Supervision of Debtors' Affairs—Section 16

The provision in Section 16 for including in proposals terms respecting supervision of the affairs of the debtor during the composition, extension or scheme is approved.

Companies' Creditors Arrangement Act

The Companies' Creditors Arrangement Act was passed to enable the reorganization of corporations where classes of securities are involved. It has proved a valuable instrument for realization by investors and it is most important that it be retained for that purpose.

However, the provisions of the Companies' Creditors Arrangement Act were wide enough to permit ordinary trading compositions, extensions and schemes of arrangement under it and, in the years before the war, when insolvencies were more numerous than now, certain defects, principally of a procedural character, did become apparent from the point of view of unsecured creditors in proceedings taken by purely trading debtors under that Act.

It is necessary that the Act be amended to guard against a recurrence of these defects and prevent its use for all practical purposes where trade creditors' interests are primarily involved. It is understood secured creditor interests are preparing suggested amendments to accomplish this purpose.

Administrative Officials

Duties of Superintendent—Section 39 (4) (g)

The provision in Section 39, (4) (*g*) for the Superintendent of Bankruptcy auditing and examining trustees' accounts of receipts and disbursements and final statements and granting releases to trustees should be deleted and these functions left with the Court where they now rest. Oral explanation is often necessary in passing accounts, especially in large estates and the Courts are more accessible and provide more facility for oral explanations than the Superintendent in Ottawa acting for the whole of Canada. Moreover, while these proceedings are in the Court, creditors can intervene as the trustee must give them notice. Also, no provision is made for creditors and trustees appealing from the decision of the Superintendent, except in Section 91 (8).

No Trustee Bound to Act—Section 40 (3)

As the trustee is to be appointed in the first instance, he has not sufficient opportunity to investigate before appointment. Under Section 40 (3) he should not be bound to act until following his acceptance he has been confirmed at the first meeting of creditors.

Duties and Powers of Trustee

Insurance—Section 44 (1)

The trustee should not be required to take out theft insurance as is required by Section 44 (1). Frequently burglary insurance on the assets of a bankrupt estate cannot be obtained. Also assets are frequently of such nature that burglary insurance is not required and its cost would be an unnecessary burden on the estate.

Moneys to be Deposited in Bank—Section 44 (3)

It is impractical to limit all payments to cheques drawn on the estate account as is provided in Section 44 (3). Moreover, cheques are not legal tender.

Books and Records—Section 44 (5), (6) (7)

With regard to the books to be kept by the Trustee, Section 44 (5) is too detailed. It would require trustees with other good systems to conform to the particular method laid down. Also there is considerable doubt whether certain of the records mentioned should be kept separate for each estate. There are strong arguments in favour of their being kept in a general minute book of the trustee. Section 55 of the present Act is adequate and should be retained as the proposed subsection would be impractical in large and operating estates.

It would not be fair to require a trustee to surrender the records mentioned in ss. (6) and (7) to a new trustee or the Superintendent. Once the records were gone, the original trustee would be without the means of answering enquiries or protecting himself.

Persons Claiming Property in Possession of the Bankrupt—Section 53 (1)

The new provision in Section 53 (1) that the trustee may waive the filing of a proof of claim if satisfied a claimant is legally entitled to property, should be struck out as it is likely to lead to loose practice. A proof of claim should always be required.

How Filed Claim Disposed of—Section 53 (2)

The periods allowed the trustee in Section 53 (2) to admit or dispute claims and allowed the claimant to appeal should each be increased from 15 to 30 days. The trustee should have 30 days normally to complete investigations before being required to admit or dispute claims and, where necessary, a longer time

in the discretion of the Court. The claimant should have the longer peirod as various conditions such as being away may result in delay in appeal as the Act provides that if an appeal is not lodged within the time set a claimant will be deemed to have abandoned his claim.

Trustee Not Liable for Costs or Damages—Section 53 (5)

The provision in Section 53 (5) relieving the estate of liability for the costs of establishing a claim or of an appeal is too broad. The Court should have discretionary power to award costs to a claimant where it is clear he has been unnecessarily put to the expense of proceedings to establish his claim.

Appeals From Decision of Trustee

Proceedings by Creditor When Trustee Refuses to Act—Section 63 (1)

Section 63(1) would enable a creditor to act in his own name in proceedings when the trustee refuses or neglects to act. While this would overcome difficulties which sometimes arise when trustees require indemnity for costs, it is noted that before a creditor could carry on proceedings in his own name, the right of action would have to be transferred from the trustee to the creditor and there is insufficient protection provided other creditors for sharing in any funds recovered. For these reasons the present provisions contained in Section 69 of the Act should be retained.

Settlements and Preferences

Avoidance of Preferences—Section 68

Section 68 is a redraft of the provisions respecting settlements and preferences. There has been much litigation on the section now in the Act and there is a considerable body of settled case law. In order to retain the benefit of this settled law and avoid the contentious feature concerning "concurrent intent", it is suggested that Section 64 of the present Act be retained and a subsection added providing that it is not necessary for the trustee or creditor attacking the alleged preference to show concurrent intent.

Protected Transactions—Section 69(2)

Section 69(2) concerning protected transactions places the onus of proof on the person supporting the validity of the transaction. It seems unfair to so leave the onus of proof on transactions more than three months old as in the course of time records necessary to proof are often mislaid or lost. In the case of the older transactions the onus should lie on the person attacking the validity of a transaction. As the new section gives no advantage and seems to confuse, it is considered the section now in the Act, Section 65, should be retained.

Dividends

When Complete Realization Delayed—Section 78 (1)

The Superintendent should not, as proposed in Section 78 (3), be given power to direct preparation of an interim statement and to pay an interim dividend. This should be left to the discretion of the inspectors.

No Action for Dividend—Section 78(4)

Following the recommendation in the preceding paragraph, the reference to the Superintendent should be deleted from Section 78(4).

Statements of Receipts and Disbursements—Section 82

The proposal in Section 82 that the trustee's statement of receipts and disbursements should be passed by the Superintendent should be deleted and the

passing of these statements left to the Courts as at present which is the case with accounts of trustees, liquidators, receivers, executors, administrators and Committees of lunacy, etc.

Notice of Final Dividend—Section 83 (1) (c)

The last three lines of Section 83(1)(c) should be deleted respecting the trustee's application to the Superintendent for his release.

Shareholder Deemed to be a Creditor for Distribution—Section 87

Section 87 should be deleted. If assets remain after satisfaction of creditors' claims, such assets should not be distributed to shareholders but returned to the corporation.

Distribution of Surplus Corporation Funds—Section 88 (2)

Once creditors' claims have been met in full, the trustee has no further interest in any assets remaining and should return such assets to the corporation. Subsection 88(2) should be deleted.

Remuneration of Trustee

Fixed by Superintendent—Section 90(6)

Section 90(6), which provides that in certain circumstances the Superintendent should fix the remuneration of the trustee without right of appeal, should be deleted and this function be left to the Court as at present.

Release of Trustees

Release of Trustee—Section 91

Section 91 provides for trustees applying to the Superintendent for discharge, there being no right of appeal except in Section 91(8). This matter should be left to the Court as at present where all interested parties may appear, where argument may be heard and there are the usual rights to appeal.

Vesting of Undisposed Property—Section 92(1)

Section 92(1) would result in undisposed of equities in real property automatically vesting in mortgagees. This should not be the case as often real estate which cannot be sold at the time of the bankruptcy later increases in value. This subsection should be struck out.

Disposal of Unrealizable Assets—Section 92(2)

Section 92(2) automatically vests in the bankrupt property unrealized at the time of the trustee's release. There should be no property revested in the bankrupt except under compositions with the approval of the Court.

Disposal of Documents of Title and Records—Section 92(3)

Documents of title should not be returned to those entitled by the trustee as provided in Section 92(3), but should be held by him subject to the Rules and direction of the Court.

Final Disposition of Property or Documents—Section 92(5)

When the trustee is unable to dispose of property or documents their disposition should not be under the direction of the Superintendent as proposed in Section 92(5) but as directed by the Court.

Creditors

First Meetings of Creditors—Section 93(1)

The provision added at the end of Section 93(1) authorizing the Official Receiver to authorize meetings at the office of another Official Receiver seems

by implication to prevent an Official Receiver from designating a room other than his own office as the place of meeting in his own locality. As often the Official Receiver's Office is not a suitable place for the meeting, it should be made clear he can designate another place.

Procedure at Meetings

Chairman Shall Have Casting Vote—Section 96 (3)

Section 96(3) gives Chairman of meetings a casting vote. This could prove very embarrassing to a Chairman of a meeting, who sometimes is the Official Receiver, in the appointment or removal of trustees. To avoid this, it is suggested the following words be added to the subsection:— "In the case of a tie vote on the appointment or removal of a trustee, the Chairman shall not have a casting vote and the trustee presently appointed shall continue in office".

Right of Creditors to Vote—Section 100(1)

Section 100(1) gives a creditor the right to vote if he has lodged his proof with the trustee before or at the meeting before voting. This does not give the trustee a reasonable opportunity to check claims. Proofs should be filed before the meeting.

Persons Not Entitled to Vote—Section 105 (3) (1)

Section 105(3) (1) states that among others "any person associated with the Bankrupt 'may not vote'." The term "associated" is too loose and the intention behind it should be stated in more specific terms.

Who May be Inspectors—Section 108 (2)

Shareholders should not have the right to vote for inspectors as is provided in section 108(2). The body of shareholders constitutes the debtor and it is the settled principle of the Bankruptcy Act that control should be by the creditors.

Trustee or Inspector May Call Meetings—Section 108(7)

An inspector should not be able to block the calling of a meeting with less than three days' notice as is provided for in Section (108)7. Nor should an inspector be permitted to call a meeting which is provided for in the same subsection.

Inspectors' Fees—Section 108(14)

The scale of inspectors' fees in Section 108(14) is inadequate and should be doubled. Also fees for special services should be approved by the Court and not by the Superintendent as is proposed.

Proof of Claims

Proof by Post or Delivery—Section 110(2)
Sanction of Proven Claims—Section 110(7)

Section 110(2) (7) does not require proof of claims to be sworn to. The present requirement that proof of claim be sworn should not be dropped.

Shall State Whether Secured—Section 110(5)

Section 110 (5) requiring the proof of claim to state whether or not the claim is secured or preferred should not make the claim unsecured in the absence of such a statement. The words "otherwise, etc." to the end of the subsection should be deleted, and the words "and, if so, to what extent" be substituted therefor.

Proof by Secured Creditors

No Creditor to Receive More than 100 Cents on the Dollar—Section 118

It should be made clear under Section 118 that as well as receiving 100 cents on the dollar secured creditors may recover the costs of realizing their security.

Restricted Creditors

Postponement of Wage Claims of Relatives—Section 121

Section 121 concerning postponement of the wage claims of relatives refers to relatives to the third degree. In many cases this will not be understood. The provisions now in Section 117 of the Act detail the relatives affected. They are much more easily understood and the section now in the Act should be retained.

Admission and Disallowance

Proofs of Claim Before Courts

Trustee Shall Examine Proofs—Section 125(1)

The provision in Section 125(1) requiring a trustee to notify all creditors whose claims have been admitted should be deleted. Notification of admission of claims in all cases is unnecessary and would involve a great deal of trouble and postage and other expense. Also the trustee should not be put in the position in the early stage of a bankruptcy before he has had adequate opportunity to investigate, of having to generally admit claims or dispute them and force issues.

Trustee May Require Creditor to Prove Claim Before the Court—Section 125 (2)
Creditor May Require Trustee to Admit Claim—Section 125 (3)

Section 125 (2) and (3) and following subsections enabling the trustee, without taking a position, to call on claimants to prove their claims, is approved.

Scheme of Distribution

Priority of Claims—Section 126

Section 126 clarifying and revising priority of claims is approved.

Bankrupts

Duties of Bankrupts—Section 133

The statement of the bankrupt's duties in Section 133 is approved with the exception of the provision for the Official Receiver authorizing assistance to the bankrupt in preparing statements of affairs, when the affairs of the bankrupt are complicated or involved. In practice the trustees regularly perform this work.

Examination of Bankrupts and Others

Examination of Bankrupts at Meetings—Section 137 (4)

The provision in Section 137 (4) for the evidence of the bankrupt being taken down in shorthand is impractical. A competent stenographer is by no means always available.

Questions Must Be Answered—Section 143

The provision in Section 143 that evidence taken on examinations may be given in evidence in subsequent proceedings should be limited to evidence given at the formal examination mentioned in Sections 138, 139 and 142 (but not including examinations before the Official Receiver), of the Bill. It would be unfair to give in evidence, evidence taken at an informal examination.

Discharge of Bankrupt

Bankruptcy to Operate as Application for Discharge—Section 146 (1)
Appointment to be Obtained by Trustees—Section 146 (2)

Section 146 (1) and (2) introduces what might be termed an automatic discharge principle and places on the trustee the onus of obtaining an appointment for hearing the application for discharge within six months of the bankruptcy. It is understood that a similar provision is in United States bankruptcy legislation and that there is dissatisfaction with its operation. In any event, the six months' time limit is impractical as so often the trustee will be unable to complete and submit the required report by that time. Also the estate should not bear the cost of the application. Section 146 should be eliminated and the Act left in its present state wherein the bankrupt is responsible for applying for his discharge.

Notice to Creditors—Section 146 (4)

Section 146 (4) requires the trustee to give notice of the application for discharge to every creditor of whom he has knowledge, whether or not his debt has been proven. The notice should only be required to be given creditors who have proven as it is a deep-seated principle of bankruptcy that creditors who have not proven have no status.

Procedure When Trustee Not Available—Section 146 (5)

Section 146 (5) empowers the Court to authorize some other person to act in applying for the bankrupt's discharge when the trustee is not available. It is difficult to understand how this proposal can operate satisfactorily as if the trustee is not available necessary records will not be either. Also, the clause regarding creditors reporting adverse facts would result in an accumulation of unreliable statements which would require too much work to check.

Evidence at Hearing—Section 147 (9)
Rights of Bankrupt to Oppose Statements in Report—Section 147 (11)

Section 147 (9) and (11) are impractical. The bankrupt is not given any right to dispute the Superintendent's report, and if he were it would not be feasible for the Superintendent to appear for evidence and examination whenever a bankrupt opposed his report.

Courts and Procedure

Courts Vested with Jurisdiction—Section 159 (1) (a)

Section 159 (1) (a) states that the jurisdiction of the Bankruptcy Court is "to hear and determine all matters in dispute arising out of the administration of an estate or in which any interest of the estate is involved or to which the trustee is a party, or in which the trustee is a claimant against any other person."

The wording is so wide that it would bring into the Bankruptcy Court matters other than those purely bankruptcy matters which the Bankruptcy Court was set up to handle. The subsection should be revised to limit the Bankruptcy Court to proper bankruptcy matters.

Establishment of Judicial Districts of Courts for Bankruptcy Purposes—Section 160

So far as Ontario is concerned, Section 160 would split up the Bankruptcy Court, now centralized at Toronto, into 47 Bankruptcy Courts in the Registry Officers of the Supreme Court of Ontario. This is most undesirable as it would result in dispersion of bankruptcy records and lack of uniformity of practice.

It is also undesirable that the local Registrars of the Supreme Court, all of whom are inexperienced in bankruptcy matters, should be vested with the Registrar's judicial power as local Registrars. Further, action on petitions in outside Districts would be delayed until the arrival of Judges on circuits.

The present system has important advantages which should be retained. One Judge hearing all bankruptcy matters promotes uniformity in decisions. One office of record enables a complete search to be made in one place where all records are concentrated. Where there is only one Bankruptcy Court sitting, the confusion of simultaneous petitions at different points is avoided.

It may also be observed that centralization of the Bankruptcy Court in Toronto does not prevent much bankruptcy work being done outside the City where that is more convenient for the parties. Voluntary assignments can be made to 16 Official Receivers throughout the Province and leave may be given to try issues outside of the city. Also the local Official Receivers and Trustees have sufficiently wide powers to carry on administration that frequent reference to the Bankruptcy Court in Toronto is not necessary.

Supplemental Provisions

Documentary Evidence as Proof—Section 189 (2)

Section 189 (2) states that original or certified true copies of documents relating to bankruptcy proceedings shall be conclusive evidence of their contents. It is questioned whether they should be more than prima facie evidence of their contents.

Summary Administration

Section 196 which sets up a procedure for summary administration of bankrupt states without assets is approved generally. However, no provision is made for the cost of such administration. As official receivers have not a staff to administer these estates, it is recommended that they be authorized to appoint trustees to administer them, and that trustees be paid at the public expense.

In conformity with earlier recommendations, references to obtaining approval or permission from the Superintendent should be deleted and these matters left to the Court.

Bankruptcy Offences

Fraudulent Bankrupts—Section 200 (1) (s)

Section 200 (1) (s) makes riotous living, gambling and cash speculation and offence if it materially contributed to or increased the extent of the insolvency. It is noted that the section is not based on them being the cause of the bankruptcy. Hence in the case of bankruptcies caused otherwise and later a person might be guilty of a bankruptcy offence because he had speculated on the stock exchange or gone to the horse races or done some other possibly foolish but all too human thing. The subsection should be revised accordingly.

Criminal Proceedings—Sections 206 (4) and following

Sections 206 (4) and following which place certain responsibilities on the Crown Attorney in initiating criminal proceedings respecting bankruptcy proceedings is approved.

Failure to Observe Provisions of the Act—Section 208 (d)

The reference to the Superintendent should be deleted from Section 208 (d). While a trustee may properly be considered guilty of an indictable offence if he fails to carry out a Court Order he should not be so guilty on failure to carry out an order of the Superintendent.

Conclusion

The present Act has been found satisfactory in most respects but some amendments are necessary as suggested in this memorandum.

The sections of the present Act have been construed by the Courts over a long period of years, and the law and practice have become fairly well settled. If the wording of the sections of the Act is changed unnecessarily, it would mean the discarding of all the established jurisprudence and case law, and would open the door to fresh litigation.

Many of the Sections of Bill A-5 envisage increases in the powers of the Superintendent and greater centralization in the Superintendent's department. If these sections are enacted the department will become larger and more costly. This will be reflected in levies on estates. The debtor and ordinary creditor classes are the groups principally interested in bankruptcy and so far as is known no organizations of them have asked for any such development. Until conditions are in existence leading them to do so, it is submitted there should not be any broad movement toward increasing the Superintendent's powers and centralization of bankruptcy work in his department.

Respectfully submitted,

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